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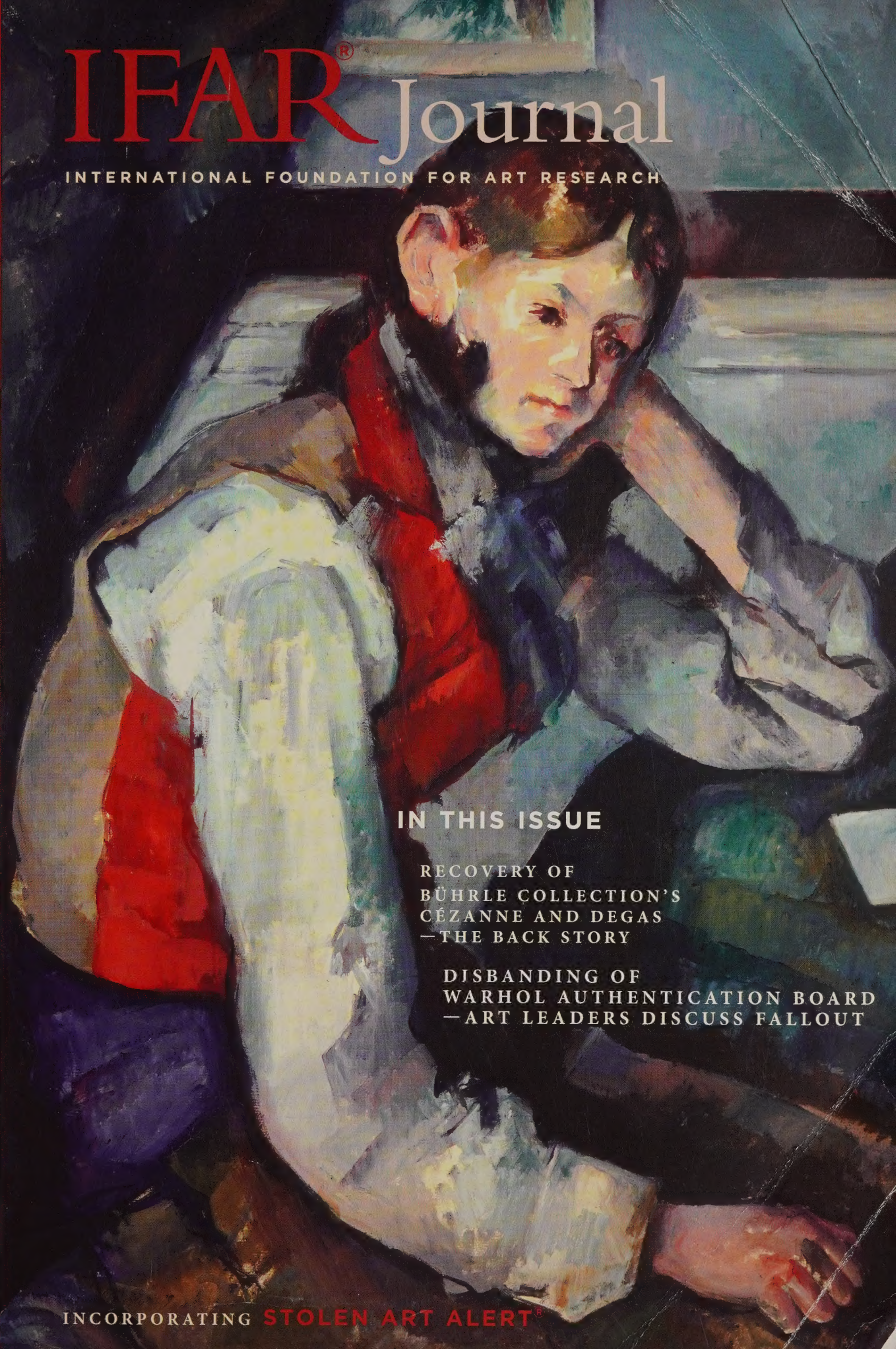

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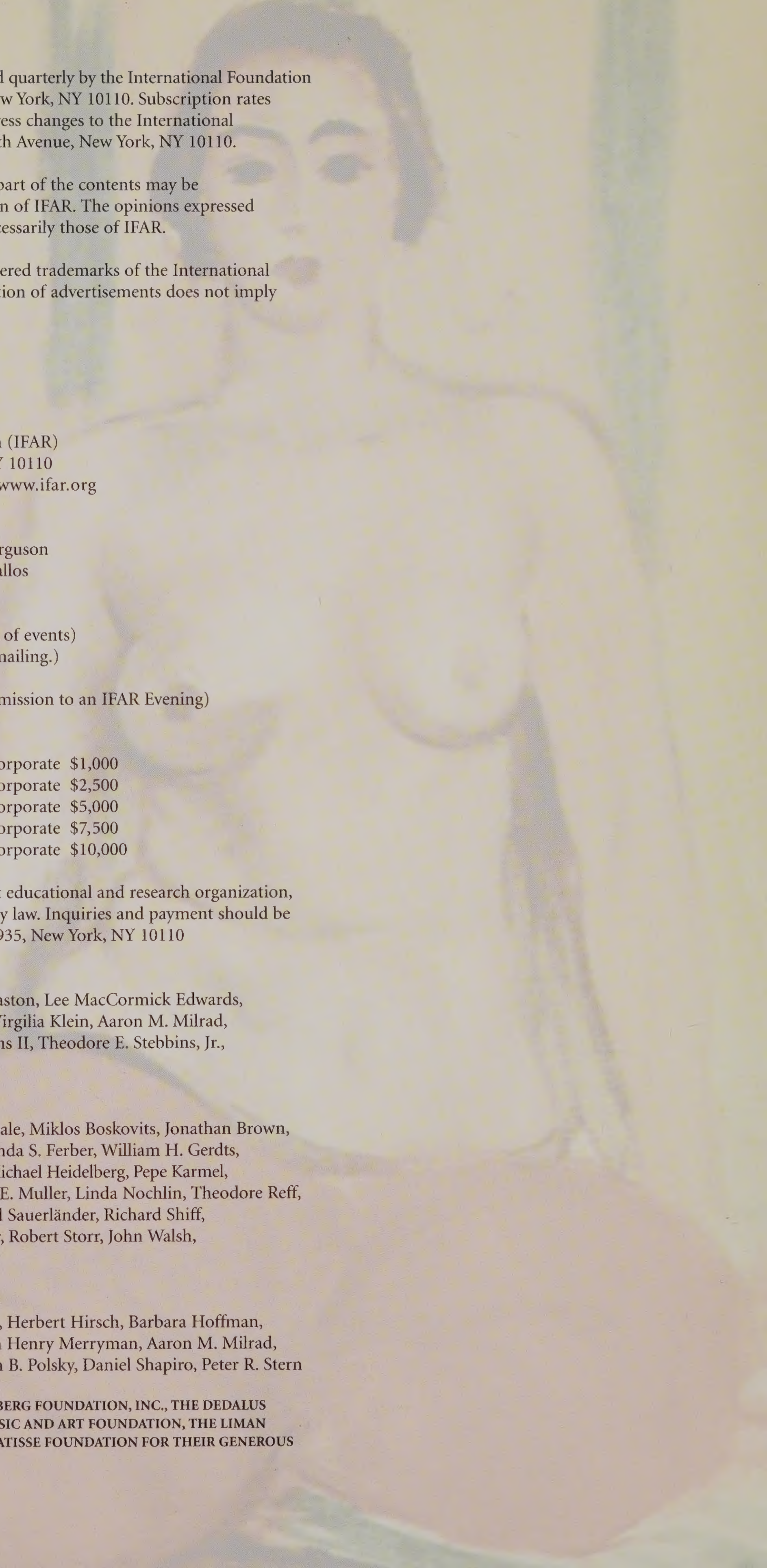

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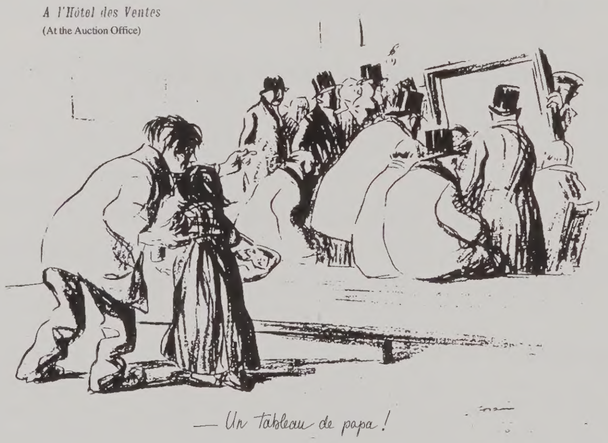
COVER: PAUL CÉZANNE (French, 1839-1906). *Boy in the Red Vest* (also known as *Boy in the Red Waistcoat*), c. 1888-90. Image cropped. Oil on canvas. 80.6 x 64.5 cm. See story on page 4. Ph. Courtesy Bührle Coll.

TO THE EDITOR:

Re: "Resale Royalties and the Visual Arts: Should the *Droit de Suite* Come to the U.S.?" *(IFAR Journal,* Vol. 12, no. 4, p. 28) and Letter to the Editor by John H. Merryman, *IFAR Journal,* Vol. 13, nos. 1 & 2, p. 2)

This is to respond to Professor Merryman's letter about resale royalties that appeared in the last issue of *IFAR Journal.* In his otherwise illustrious career, Professor Merryman seems never to have encountered an artist's right of which he approves. Rather, he derides the resale royalty as being of benefit only to "successful artists," who would grow richer thereby, and adds, "At a time when there is concern about the disparity of wealth in America, legislation that would increase the disparity is difficult to justify." Are we not to conclude therefore that the Professor would favor the resale royalty if the times were more propitious?



Ce dessin de Forain a provoqué le mouvement d'opinion qui s'est trouvé à l'origine de la loi du 20 juin 1920 créant le « droit de suite » en France.

(This FORAIN's drawing originated the movement that was going to initiate the June 20 , 1920 Law creating the "Droit de Suite" in France.)

In point of fact, the data gathered in the United Kingdom and France show that the royalty is of wide benefit to many working artists who are little known (specifically, there were 855 different artist beneficiaries in the U.K. in 2010[1], and 2024 artists for the same period in France[2]). History abounds with examples of impoverished artists whose works achieved acclaim only late in life or after their deaths. (Please see the accompanying 1920 illustration by Jean-Louis Forain, showing two children in tatters watching top-hatted bidders vie for one of their father's works. This cartoon served as an impetus for the French adoption in 1920 of the resale royalty, more often known in Europe as the *droit de suite*). Visual artists remain the only members of the creative community in the U.S. who do not receive some form of residual royalty for their works, while composers, lyricists, playwrights, actors, etc. do.

That the resale royalty right might also benefit successful artists is no argument for withholding its benefits from all. Noted Professorships, with their emoluments, are rarely bestowed on unsuccessful academics, but that is no reason to deny them to all.

Professor Merryman quotes a sentence from the Copyright Register's report of 1993 indicating that the copyright office did not then recommend the adoption of a U.S. *droit de suite.* However, the very next sentence of the report, which he conveniently omits, points in another direction. It goes on to say,

> "The international community is now focusing on improving artists' rights, including the possibility of harmonization of *droit de suite,* within the European Community. Should the European Community harmonize existing *droit de suite* laws, Congress may want to take another look at the resale royalty, particularly if the community decides to extend the royalty to all member states."

It has been 11 years since the European Community did just that, and harmonized the *droit de suite* for all member states. It is therefore well past time for Congress 'to take another look" at the issue, as the 1993 report suggests.

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[1] *EC Consultation on the Implementation and Effect of the Resale Right Directive.* March 2011. Q. 7, page 16.

[2] *Contribution à la consultation publique de la Commission Européene. En vue de l'elaboration du rapport...sur le droit de suite.* March 9, 2011, pages 4-5.

In the *Art Newspaper* of August 4, 2011, Professor Merryman lamented that there would be "dancing in the streets" if the law were enacted. Without doubt, he would be a welcome and most honored guest at any such block party.

Theodore Feder, Ph.D.
Founder and President of Artists Rights Society
Founder and President of Art Resource

• • •

TO THE EDITOR:

Prof. Merryman's assertion that "successful artists, the elite who also dominate the first sale market . . . are the only ones who would benefit from the resale proceeds rights" is astonishing. Perhaps the largest group of beneficiaries of the *droit de suite* are the artists' descendants, who survive into the 50 to 70 year period before their inherited copyrights to the works of their deceased parent or other direct relative expire. For many of them, especially those whose ancestor was recognized by the art market only posthumously, the *droit de suite* is a welcome, and one might even say a socially justified, source of income. The United States should certainly adopt it.

Hattula Moholy-Nagy
The Moholy-Nagy Foundation
Ann Arbor, Michigan

• • •

RESPONSE FROM JOHN H. MERRYMAN

I have four brief comments on Dr. Feder's letter:

1. If Dr. Feder had done his homework, he would know that I strongly support artists' moral rights[1] and was instrumental in drafting and helped in the enactment of California's moral rights legislation, the first in any common law jurisdiction.[2]
2. The bare data Dr. Feder cites for the UK and France are potentially interesting, but the rich data fully cited and rigorously analyzed by Jeffrey C. Wu[3] are more relevant to the U.S., whose art system differs fundamentally from those in the UK and France.[4] Wu's data support the generalization that the great majority of American artists have no significant resales.
3. People who support enactment of the resale right either do not understand it[5] or have an unstated interest in its enactment, as does Dr. Feder's Artists Rights Society.
4. Dr. Feder is mistaken. Our law does not discriminate against visual artists, who have the same rights as "composers, lyricists, playwrights, actors, etc. do."

Much of the above also responds to the letter from Hattula Moholy-Nagy.

John H. Merryman
Sweitzer Professor of Law and Affiliated Professor of Art, Emeritus, Stanford Law School

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[1] See: J. H. Merryman, "The Refrigerator of Bernard Buffet," *Hastings Law Journal*, Vol. 27 (1976), p. 1023, republished in *Thinking About the Elgin Marbles: Critical Essays on Cultural Property, Art and Law* (2d ed. 2009), p. 405.

[2] California Civil Code §987 (1979) and §989 (1982).

[3] Jeffrey C. Wu, "Art Resale Rights and the Art Resale Market: A Follow-Up Study," *Journal of the Copyright Society of the USA*, Vol. 46 (1999), p. 531.

[4] Those interested in the difference might read J. H. Merryman, "Art Systems and Cultural Policy," *Art, Antiquity and Law*, Vol. 15, no. 2 (July 2010), p. 99.

[5] Those interested in understanding the resale right might care to read J. H. Merryman, "The Wrath of Robert Rauschenberg," *Journal of the Copyright Society of the USA*, Vol. 40 (1992), p. 241, republished in *Critical Essays*, supra, p. 441.

FROM SWITZERLAND TO SERBIA AND BACK THE BÜHRLE COLLECTION'S STOLEN CÉZANNE AND DEGAS

AN INTERVIEW WITH THE MUSEUM'S DIRECTOR SHEDS LIGHT ON THE THEFT AND RECOVERY

Four years after the brazen theft of four Impressionist and Post-Impressionist paintings from the Bührle Collection in Zurich, the crime seems headed for a resolution. Suspects are in custody and awaiting trial in Belgrade, Serbia, and all four paintings are back in Switzerland.

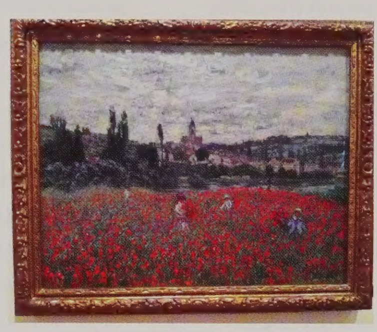

FIGURE 1. CLAUDE MONET *Poppy Field at Vétheuil,* 1879. Oil on canvas. 71.5 x 90.5 cm.*

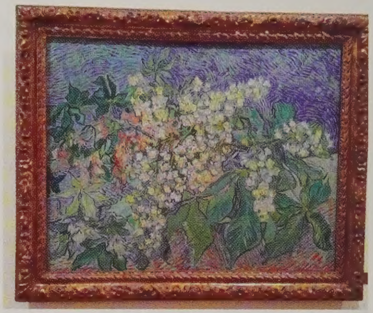

FIGURE 2. VINCENT VAN GOGH *Blooming Chestnut Branches,* 1890. Oil on canvas. 72.5 x 91 cm.

Both works were recovered less than two weeks after the February 2008 theft from the Bührle Collection.

> "Their recovery leaves many unanswered and vexing questions."

Two of the four paintings — Monet's *Poppies Near Vétheuil* of 1879 **(FIG. 1)** and Van Gogh's *Blooming Chestnut Branches* of 1890 **(FIG. 2)** — were recovered about a week after the theft and were put back on view, while the remaining two — Degas' *Ludovic Lepic and his Daughters*, c. 1871 **(FIG. 3)** and Cézanne's *Boy in the Red Vest* (also known as *Boy in the Red Waistcoat)* of 1888-90 **(FIG. 4)** — were found this spring after a multi-national search operation.

Their recovery leaves many unanswered and vexing questions that may be answered during the trial, such as: why steal such famous and hard-to-sell paintings? Who masterminded the theft, and what is the nature of the underground criminal network that moved the paintings from Zurich to Belgrade, where their recovery was announced in April? And, why Serbia?

As to the paintings themselves, and the theft, here is what IFAR has been able to learn, based on a recent private visit to the Bührle Collection and extensive discussions with its Director, Dr. Lukas Gloor, plus information released by Swiss government officials.

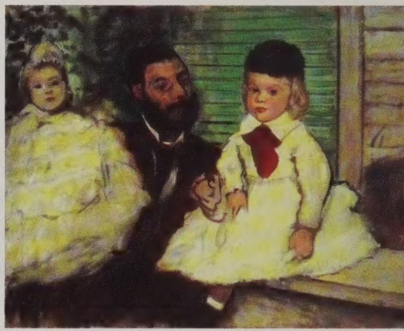

FIGURE 3. EDGAR DEGAS *Ludovic Lepic and His Daughters,* c. 1871. Oil on canvas. 65.6 x 81 cm. Recovery announced in April 2012. Ph. Courtesy Bührle Coll.

First, and most important, the two works that were not recovered right away — the Cézanne and Degas — are intact; damaged, but in reparable condition. While the Cézanne sustained only minor damage — the thieves apparently took the time to take the painting out of the frame and remove the stretcher — the Degas was not so fortunate. Visible cuts on the upper left, from what

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* Photos 1, 2, and 7–9: S. Flescher.

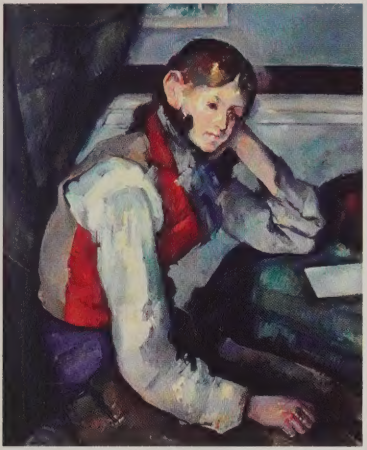


FIGURE 4. PAUL CÉZANNE *Boy in the Red Vest* (also known as *Boy in the Red Waistcoat*), c. 1888–90. Oil on canvas. 80.6 x 64.5 cm. Recovered in Belgrade in April 2012. Ph. Courtesy Bührle Coll.

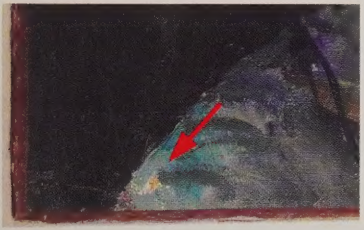


FIGURE 5. Detail of the Cézanne showing damaged area bottom left.

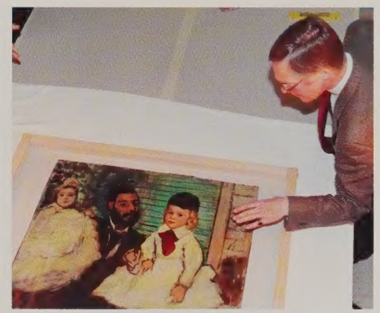
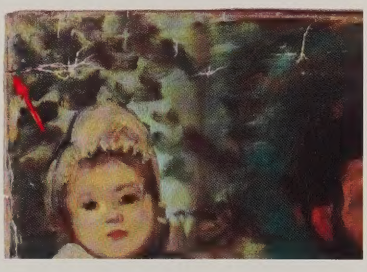
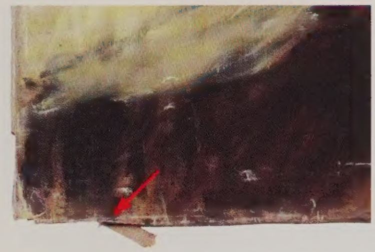


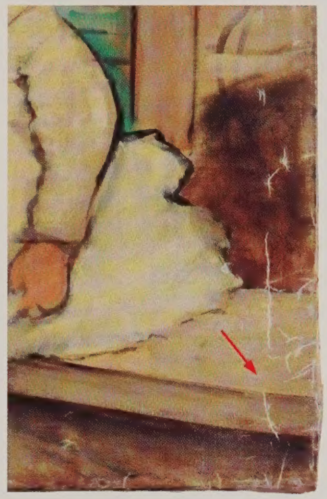
FIGURE 6A. Bührle Collection Director Lukas Gloor inspecting the recovered Degas painting. Ph. Courtesy Bührle Coll.



6C. Detail showing damage upper left.



6B. Detail showing damage to the Degas, lower left corner.



6D. Detail showing damage lower right.
Ph. 5, 6B-D: Canton Zurich.

> "Here is what IFAR has been able to learn, based on a recent private visit to the Bührle Collection and extensive discussions with its Director, Dr. Lukas Gloor, plus information released by Swiss government officials."

appears to be a knife, indicate that the painting was ripped, even in part cut, from the stretcher without care. As it was never lined, it was particularly fragile, and once off the stretcher, it became especially vulnerable. The Cézanne, on the other hand, had been relined and kept its shape during the ordeal. Its tacking margins, which had been folded, remained intact. "This will allow it to be put on a new stretcher without doubling the margins," Dr. Gloor told IFAR. "One scratch lower right and one minimal loss of pigment lower left can be restored with minimal intervention" **(FIG. 5)**. Both works are currently undergoing conservation treatment at the Kunsthaus in Zurich.

The Degas will take longer to repair **(FIGS. 6A-D)**. "That canvas," Dr. Gloor said, "needs at least six months of quite extensive treatment. Rips of an overall length of 290 centimeters" (114 inches) — the entire circumference — "have to be repaired by gluing together the canvas thread by thread." But, fortunately, the damage, is

> "The works were not fully insured, but for tactical reasons, Dr. Gloor told IFAR, that fact was not made public."

restricted to the margins and "no important parts of the painting — such as the figures — are affected." Small parts of the margin, however, are missing. There is a "big rip in the upper left, along the outer side of the former stretcher, [which] might indeed have been a cut," but it is now believed that a "second rip in the upper right, exactly along the inner end of the stretcher, might have been caused when a thumb was quite simply pressed against the canvas, tearing it apart."

The museum, Gloor added, will use this opportunity to address other conservation needs for the Degas, such as "the glossy varnish, which has turned quite yellow," and will try "to remove it completely, if possible, or else attenuate it," a painstaking process requiring the "utmost care and prudence."

The *Boy in the Red Vest,* one of Cézanne's most celebrated works, was Emil Bührle's favorite painting in his collection, acquired in 1948, early in his collecting career. It is one of four known versions in oil showing the same young Italian male model, classically posed in Cézanne's studio. The largest of the four is in the National Gallery of Art in Washington; the smallest is in the Barnes Collection; and one, which formerly belonged to the painter Claude Monet, is in New York's Museum of Modern Art. Cézanne also painted two watercolor versions of the young man in the same red vest.

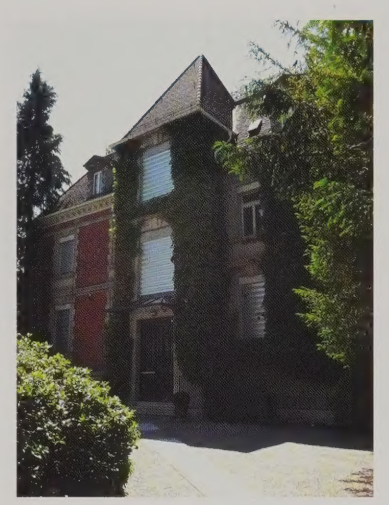


FIGURE 7. **The building housing the Bührle Collection in Zurich.**

The recovered Degas painting is one of several important works featuring Degas' friend, the aristocratic Ludovic-Napoléon Lepic. The Bührle Collection painting shows Lepic with his two young daughters and dates to the same period as Degas' *Place de la Concorde,* now in the Hermitage Museum in St. Petersburg, where Lepic is shown with the same two daughters out for a stroll in Paris. Lepic was an artist and printmaker in his own right, and the noted Degas scholar, Theodore Reff, told IFAR that in the 1870s Lepic developed a new technique of monotype printmaking that he introduced to Degas, who carried the technique to further expressive ends.

THE THEFT — A RECAP

The ongoing restoration of the Cézanne and Degas, and the effect of the theft on the museum today, are constant reminders of that fateful and stunning day in 2008.

The details of the 2008 theft were reported extensively at the time. It was quick, brazen and slick. Around 4:30 on Sunday afternoon, February 10, just half an hour before closing, three thieves wearing ski-masks, brandishing guns and speaking German in what witnesses later said was a Slavic accent, entered the small museum **(FIG. 7)** that houses one of the world's great collections of Impressionist and Post-Impressionist paintings, amassed by Swiss industrialist Emil Bührle.

The museum is located in a quiet, upscale residential neighborhood in Zurich. Fifteen visitors and a few staff were in the museum. Like many small museums in Europe and elsewhere, it had no armed guard, metal detector, bag inspection, or video surveillance system. The museum was vulnerable. One gunman held two unarmed guards

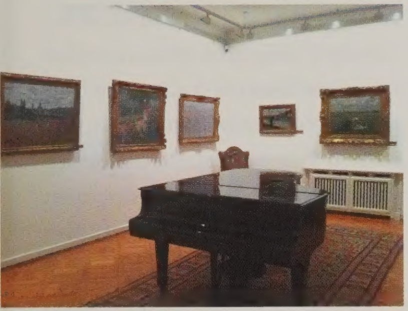


FIGURE 8. Photo showing the two walls on the entry floor where the four paintings were hung. The recovered Monet (on the far left) is in its original location.

and a couple of museum visitors at bay in a small gallery immediately to the left of the entry landing. He was not interested in the Bonnards and Vuillards on the walls.

The two other thieves made their way to the next, much larger room devoted to more valuable Impressionist and Post-Impressionist works, and pulled the first four paintings off the wall — the three paintings that were hanging on the wall to the left of the entrance, the Monet, the Degas and Van Gogh, and the first painting on the adjacent wall, the Cézanne **(FIG. 8)**. Ironically, the Cézanne — arguably the most valuable of the four stolen works — was not usually located there; it had recently been rehung, Dr. Gloor told IFAR, due to the loan of another work to an exhibition.

The pulling of the works off the wall triggered the museum's sensor alarm system, and the police arrived quickly, but not in time. The thieves were in-and-out in all of about three minutes.

They had a white getaway car in front of the museum. They threw the paintings — still in their heavy gilt frames — into the luggage compartment, but they didn't fit, and the car sped away with the trunk door open. On the quiet street in Zurich, with little car or foot traffic, a car speeding away with an open trunk exposing elaborately framed paintings did not, it seems, draw any attention **(FIG. 9)**.

In the aftermath of the stunning theft, news spread quickly. It was the *first ever* armed robbery of a Swiss Museum, the largest art theft in Swiss history, and these famous works were valued at close to two hundred million dollars. A reward of 100,000 Swiss Francs was offered for information leading to their recovery. The works were not fully insured, but for tactical reasons, Dr. Gloor told IFAR, that fact was not made public.

FIGURE 9. The residential street outside the Bührle Collection.

> "We now know that the investigation for the Degas and Cézanne started almost immediately, lasted four years, and involved at times 'up to 30 investigators from six countries' . . ."

Part of the 100,000 SF reward was paid out when, eight days later, on Monday, February 18, the getaway car was discovered in the parking lot of a psychiatric clinic about a kilometer away. Two of the stolen paintings — the Van Gogh and the Monet — were in the back seat. The paintings — almost unbelievably — were undamaged and, in fact, were still in their frames and under the protective glass that covered them in the museum. The car itself was unlocked and had stolen Zurich license plates. The supervisor of the clinic, who only just then noticed the presumably abandoned car, had notified the police. That delay didn't stop him, however, from applying for — and receiving — part of the reward.

Word spread quickly that two of the four paintings were recovered and they were soon back on view at the museum.

THE WORKS TURN UP — THE SERBIAN LINK

What was kept from the public was that, in their getaway, the thieves slipped up — big. Along with the Van Gogh and Monet paintings, they left one of the masks in the car. DNA on the mask was traced to a Serbian criminal known to Swiss authorities, who had a record suggesting that he and his accomplices were potentially dangerous.

"What did not leak out . . . was that the Degas painting was recovered and brought back to Switzerland some time before the Cézanne. Authorities feared that publicity might jeopardize the recovery of the Cézanne."

We now know that the investigation for the Degas and Cézanne started almost immediately, lasted four years, and, according to the official Swiss Government Press Release of April 27, 2012, involved "intensive and complex investigations" by Zurich municipal police, organized crime specialists in the Canton of Zurich, and Serbian authorities. At times, the release notes, "up to 30 investigators from six countries were involved." Surveillance measures included phone tapping and undercover work, details of which are not being released to protect the safety of those involved. The operation was dubbed "Europe Prsluk" (waistcoat).

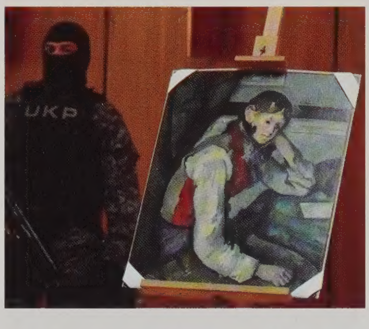


FIGURE 10. Serbian armed guard protecting the recovered Cézanne.

The investigation had a dual purpose — to recover the paintings in good condition and to capture the criminals. In the course of the ultimately successful sting operation, 2.8 million euros changed hands, some of which, authorities say, has since been recovered.

What did not leak out — not even to the highest echelons of the Swiss art world — was that the Degas painting was recovered and brought back to Switzerland some time before the Cézanne. Authorities feared that publicity might jeopardize the recovery of the Cézanne, and the museum still cannot comment on it.

That recovery took place on April 11. Serbian police had uncovered a plot to sell the Cézanne, but before the sale could take place, a culprit was cornered in a Belgrade parking lot after a high-speed police chase. The painting was found in his car, along with money and weapons, and he — the apparent ringleader — and accomplices were arrested by Special Units of the Serbian police **(FIG. 10)**. Swiss officials were in Belgrade, having arrived a few days before then in anticipation of the endgame. After the arrests, police carried out searches in various (and as yet unnamed) places, finding more money and weapons. Twelve days later, on April 23, the Cézanne was handed over to a Swiss delegation and the painting was flown back to Switzerland.

It is perhaps not surprising that the works turned up in Serbia. The Serbian connection to art crime in Europe is becoming an all too common occurrence. In October 2011, only a few months before the recovery of the Degas and Cézanne, two Picassos — *Tête de Cheval* (1962) and *Verre et Pichet* (1944), which were stolen while on loan from the Sprengel Museum in Germany to a cultural center in Pfäffikon, a town near Zurich — were also found in Serbia. That theft took place also in February 2008, only two days before the theft from the Bührle Collection.

It is well known to specialists in the field of art recovery that Serbia and the entire Balkan region play an important role in European art theft — as both a transit point for stolen art and a breeding spot and haven for the criminal gangs involved. The Art Loss Register

(ALR) has long been targeting the Balkans, and Richard Ellis, formerly head of England's Metropolitan Police Art & Antiques Unit and now a private investigator, has set up his recovery company to focus on the Balkans. Ellis told IFAR that he, in fact, helped recover the two Picassos. Presumably Serbian authorities aren't pleased with the reputation their country is getting, and they have set up an Anti-Organized Crime Unit, which collaborated with the Swiss and police in other countries in this successful recovery.

Four accused criminals in the Bührle Collection crime are now in custody in Belgrade, awaiting trial. With good luck the trial will elicit information that will help clamp down on the rash of art thefts linked to Serbia and shed more light on the theft at the Bührle Collection. For now, however, let us be thankful that all four stolen works have been recovered and that the Degas and Cézanne will be back on view before long.

Meanwhile, the Bührle Collection has reduced the hours it is open to the public from four days each week to one day a month, while it contemplates how to improve security without destroying the inviting and contemplative environment that made it so pleasant to view the masterpieces in its collection.

> "The Serbian connection to art crime in Europe is becoming an all too common occurrence."

— **SHARON FLESCHER**

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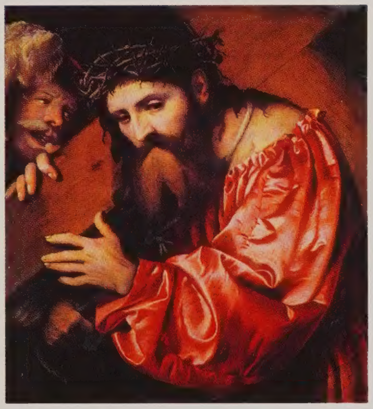
ITALY TO FLORIDA TO AUCTION — TRAJECTORY OF A RESTITUTED WORK

The highlight of Christie's Old Masters and 19th Century Art auction on June 6 was Girolamo Romanino's *Cristo Portacroce (Christ Carrying the Cross)*, a painting recently restituted to the heirs of art collector Frederico Gentili di Giuseppe, who claimed it while it was on loan to a Florida Museum. The auction house not only sold the work for a record-breaking price of $4.6 million, but was instrumental in the claim itself being made.

Gentili di Giuseppe, an Italian Jewish resident of Paris, died just before the Nazi invasion of France in 1940. His adult children fled the country, and his art collection, including *Cristo Portacroce*, was confiscated by the Vichy Government. Pursuant to an anti-Semitic law that deprived French nationals who had left France of their nationality and provided for the seizure of their property, the estate was liquidated, and *Cristo Portacroce* was sold at auction in



GIROLAMO ROMANINO, *Cristo Portacroce* (c. 1538), oil on canvas, 81 x 72 cm (31 7/8 x 28 3/8 in.).

1941 to a Parisian gallery. More than fifty years later, in 1998, it was acquired by the Pinacoteca di Brera, a small state-run museum in Milan, which lent the painting last year to the financially struggling Mary Brogan Museum of Art and Science in Tallahassee, Florida, for an exhibition titled "Baroque Painting in Lombardy from the Pinacoteca di Brera." The Brera should have been aware that the loan might be problematic.

Gentili di Giuseppe's heirs have been actively searching for works formerly in the family collection and, since 1997, have recovered approximately 20 works from the Louvre, the Berlin Museum, the Princeton University Art Museum, the Museum of Fine Arts, Boston, and the Art Institute of Chicago, among others. In 2000, the heirs sought the return of *Cristo Portacroce*, but the Brera refused. In June 2011, a Christie's employee visiting the Brera noticed that the painting had been loaned to the Brogan, and informed the heirs. Interpol, U.S. Immigration and Customs Enforcement (ICE), and the U.S. Attorney's office were alerted.

The Brogan was ordered not to return the painting to Italy, and in an unusual turn of events, capitalized on the court order to publicize the museum. It announced on its website that it was "at the Center of International Intrigue," and renegotiated its contract with the Brera so that, as the Brogan's director noted, the ownership controversy might entice "people to come to see" the painting. Neither the publicity nor the revenues resulting from the controversy, however, were sufficient to resuscitate the ailing Brogan, and the museum closed in early 2012.

As for the painting, the U.S. Attorney for the Northern District of Florida initiated an *in rem* civil forfeiture action and the painting was seized by ICE on November 4, 2011. In January the district court issued a default judgment because neither the Italian Republic, the Italian Ministry of Culture, nor the Brera came forward to dispute the heirs' ownership claim, and the painting was forfeited to the U.S. government. Later that month, the U.S. government entered into a settlement agreement with the heirs and restituted the painting to them in April. Less than two months later, Christie's auctioned the work on their behalf.

— KATIE GERLACH
IFAR LAW INTERN

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LETTERS TO THE EDITOR

REMINDER

"Letters to the Editor" are welcome in *IFAR Journal*. Please keep letters brief. We reserve the right to edit for length. All letters must be signed. Please fax or mail letters to:

Dr. Sharon Flescher, Editor-in-Chief, *IFAR Journal*
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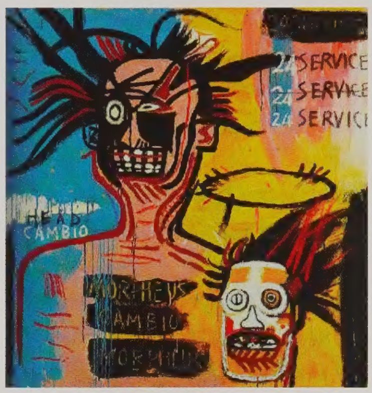
COURT DISMISSES SUIT AGAINST CHRISTIE'S FOR SALE OF FAKE BASQUIAT AND REVEALS SURPRISE LINK TO KNOEDLER SCANDAL

A New York state trial court recently dismissed fraud claims brought by Italian art collector Guido Orsi against Christie's over its 1990 auction sale of a fake Jean-Michel Basquiat painting to the art dealer who later sold it to Orsi.[1] The court found that even though Orsi — who acquired the work in 1991 from the auction purchaser — had uncovered evidence that Gerard Basquiat (the artist's father and head of the Basquiat Authentication Committee) had viewed the work prior to auction and told an unidentified Christie's employee that it was "not right," that evidence was not enough to prove that Christie's actually knew that the work was fake, or that it intended to commit fraud.

The court also revealed the painting's surprising source: it had been consigned to Christie's by "Carlo Diaz" of Westbury, New York. If the name seems familiar, that is because, according to court documents obtained by IFAR, "Carlo Diaz" is an alias for "Jose Carlos Bergantinos Diaz," an art world figure tied to a supplier of a group of alleged forgeries connected to Knoedler & Co., a venerable New York gallery that closed its doors late last year amid accusations that it knowingly passed off the fakes as real.



Fake Basquiat sold at auction in 1990 as authentic.

According to court records, Diaz consigned the purported Basquiat to Christie's on December 14, 1989. The work sold at auction in February 1990 to New York gallery owner Tony Shafrazi for $242,000 (including premium). The catalogue accompanying the sale described the provenance as having been acquired "directly from the artist." Orsi purchased the painting from Shafrazi in 1991 for $185,000, relying, he says, on the provenance listed in the catalogue.

The work's authenticity remained unquestioned until 2006, when it was denied entry into an Italian art exhibition due to concerns over its authorship. Orsi turned to the Authentication Committee of the Estate of Jean-Michel Basquiat, hoping to have the work authenticated, but the Committee informed Orsi that the painting was counterfeit. It also told him that his submission was not the first time that Gerard Basquiat had seen the painting. The elder Basquiat recalled having viewed the work days prior to the auction, and telling someone at Christie's that it was "not right."

"The court also revealed the painting's surprising source: it had been consigned to Christie's by "Carlo Diaz" of Westbury, New York. If the name seems familiar, that is because, according to court documents obtained by IFAR, "Carlo Diaz" is an alias for "Jose Carlos Bergantinos Diaz," an art world figure tied to a supplier of a group of alleged forgeries connected to Knoedler & Co. . . ."

In 2007, Orsi and Shafrazi joined forces against Christie's, alleging claims for fraud, negligence and breach of contract. Central to the suit was their allegation that Gerard Basquiat had put Christie's on notice that the painting was a forgery, but that the auction house had gone ahead and sold it anyway. Christie's quickly moved to have the case dismissed,[2] arguing that (1) Shafrazi had not been harmed because he actually made money when he sold the painting to Orsi; and (2) only original purchasers — not unknown and arguably unforeseen downstream purchasers like Orsi — should be entitled to rely on its auction catalogues. On November 17, 2008, the court dismissed Shafrazi's claims, as well as certain of Orsi's claims whose statutes of limitations had expired, but it allowed Orsi to proceed with his fraud claims. It reasoned that as a "prestigious auction house" and so-called "market maker," Christie's should have known that its catalogues would be relied upon "by bidders at its auction, as well as subsequent purchasers."

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[1] *Tony Shafrazi Gallery, Inc. v. Christie's Inc.*, No. 112192/2007, slip op. (N.Y. Sup. Ct. Nov. 22, 2011).

[2] *Tony Shafrazi Gallery, Inc. v. Christie's Inc.*, No. 112192/2007, slip op. (N.Y. Sup. Ct. Nov. 7, 2008). See also Mary Morabito Rosewater, "'Market Makers' Beware: Downstream Purchaser of Fake Basquiat Painting Allowed to Proceed Against Christie's," *IFAR Journal*, Vol. 12, no. 1 (2010).

The parties then conducted discovery, during which Gerard Basquiat and gallery owner John Cheim (acting on behalf of the Basquiat Estate) testified that they had viewed the painting at Christie's East prior to the auction, both had doubts about its authorship, but neither had specifically told Christie's that it was a forgery. Cheim said that he "never spoke to anyone at Christie's" about the work. Gerard Basquiat, however, testified that he did tell someone at Christie's Park Avenue location that the work was "not right," but he could not identify the man with whom he spoke beyond that he wore a business suit, was "fortyish and blond," and maybe "5'8 or 5'9." Gerard Basquiat also did not know the man's name, title, or department within Christie's.

Christie's moved for summary judgment in January 2011, arguing that nothing in the record, including the deposition testimony, could establish that it ever knew that the work was a fake or that it had intended to commit fraud. This time the court agreed with Christie's completely. On November 22, 2011, it ruled that under "the proof presented," a jury would need to "assume that the anonymous and unidentified person" with whom Gerard Basquiat spoke "over 20 years ago, worked for Christie's, had some authority, and conveyed" what Gerard Basquiat told him "to a person with authority at Christies." "This proof," said the court, "at most" amounted to "a shadowy semblance of an issue, insufficient on a summary judgment motion." It accordingly dismissed Orsi's suit against Christie's with prejudice.

ALLEGATIONS AGAINST DIAZ

While the case may be over between Orsi and Christie's, allegations against Diaz — the consignor of the fake Basquiat — continue to accumulate. For instance, in a lawsuit filed in early 2011, Diaz's live-in companion, Long Island art dealer Glafira Rosales, was alleged to have supplied a fake Robert Motherwell painting to a gallery owner with ties to the Knoedler Gallery.[3] That same year, London-based art collector Pierre Lagrange demanded that the Knoedler Gallery return $17 million that he paid for a supposed Jackson Pollock painting that, according to scientific tests, turned out to contain "inconsistent materials." Knoedler refused to refund Lagrange's money, announcing on November 30 that it would close its doors after 165 years in business. To date, Lagrange and two others have sued Knoedler for allegedly selling them fakes.[4] Two of the suits claim that the alleged forgeries were sourced from Diaz and Rosales.[5] Of those, the most recent Complaint, in *Howard v. Freedman*, alleges that the forgeries were "[l]ikely created by" Diaz, or by "persons supplying or working with him and Rosales."[6]

— MARY MORABITO ROSEWATER
IFAR LEGAL ASSOCIATE
AND **S.F.**

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[3] *Killala Fine Art, Ltd. v. Weissman*, No. 11-cv-0702 (S.D.N.Y., filed Feb. 1, 2011).

[4] *Lagrange v. Knoedler Gallery*, No. 11-cv-08757 (S.D.N.Y. filed Dec. 1, 2011); *De Sole v. Knoedler Gallery*, No. 12-cv-2313 (S.D.N.Y. filed March 28, 2012); *Howard v. Freedman*, No. 12-cv-5263 (S.D.N.Y. filed July 12, 2012).

[5] *De Sole*; *Howard*.

[6] *Howard v. Freedman*, Complaint, p. 5.

FEDERAL COURT SOURS ON CALIFORNIA *DROIT DE SUITE* STATUTE

PLAINTIFF ARTISTS, ARTISTS' FOUNDATIONS AND ESTATES PLAN APPEAL MEANWHILE NATIONAL LEGISLATION IS PROPOSED

On May 17, a federal court struck down the California Resale Royalties Act (the "CRRA"), a 35-year-old state statute that had entitled visual artists to royalties whenever their works were resold.[1] Although artists' resale royalty rights, also known as *droit de suite*, have long been recognized in Europe, the California statute, which the court found to be unconstitutional, was the only law of its kind in the United States. Dr. Theodore Feder, President of the Artists Rights Society and a leading advocate of resale royalties for artists, told IFAR after the ruling that he views it as a "great setback" that reinforces "the evident and overdue need" for a resale royalty statute "applicable to *all* the states."

The California act had entitled artists and their heirs (for a period of 20 years after the artist's death) to a 5% royalty on the total sale amount whenever their works sold for more than $1,000. The royalty did not affect "initial sales," such as sales made by an artist directly. Rather, it applied each time an artwork was resold by a gallery, dealer, auction house, broker, museum, or other seller's agent. Importantly, royalties could be collected either when a sale took place in California, or on a sale outside of California, when the seller was a California resident. If the artist could not be located, the royalty was to be paid to the California Arts Council for the acquisition of fine art for public viewing. The statute, which had been championed by artists' groups, was passed by the California legislature in 1976 (and put into effect the following year) with little if any input from museums, collectors, auctions houses and dealers. Since its enactment, many artists have said that the CRRA was frequently ignored and honored more in the breach.[2]

In October 2011, artist Chuck Close and the Estate of Robert Graham invoked the CRRA when they sued Sotheby's in the United States District Court for the Central District of California, claiming that the auction house owed them and other artists unpaid royalties.[3] They also alleged that Sotheby's engaged in a "custom and practice" that made it practically impossible for artists to identify royalty-generating sales, concealing key facts about transactions — such as a seller's California residency or a sale's having taken place in California — that would have triggered an artist's right to royalties. Sotheby's and later Christie's, which was named in a related suit brought by the Sam Francis Foundation, did not deny those practices. Rather, like the proverbial roused giant, their response was to attack the very constitutionality of the law.

> "Many artists have said that the California Resale Royalties Act was . . . honored more in the breach."

Constitutional concerns have in fact long dogged the CRRA. Before it became law, then-California Legislative Counsel George H. Murray warned that insofar as the legislation applied to "out-of-state sales," it "would be invalid" under the Commerce Clause of the U.S. Constitution. Despite this, the law was enacted, but was rarely enforced — arguably due to some of the practices at the heart of the *Estate of Robert Graham* and *Sam Francis Foundation* complaints.

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[1] Cal. Civ. Code § 986.

[2] For instance, in 2010, artist Mark Grotjahn sued California art collector Dean Valentine for royalties allegedly withheld when Valentine sold three of the artist's paintings. The case settled in 2012 with Valentine agreeing to pay Grotjahn approximately $150,000. *Baby Moose Drawings, Inc. v. Valentine*, No. BC448921 (L.A. Sup. Ct. filed Oct. 26, 2010), *removed to federal court*, No. 11-cv-00697 (W.D. Cal. Jan. 24, 2011), *remanded to state court,* slip op. (W.D. Cal. April 1, 2011).

[3] *Estate of Robert Graham v. Sotheby's Inc.*, slip op., Nos. 11-cv-08604 and 11-cv-08605 (C.D. Cal. May 17, 2012). *Estate of Robert Graham v. Sotheby's Inc.* was consolidated with *Sam Francis Foundation v. Christie's, Inc.*, No. 11-cv-08605 (C.D. Cal, filed Oct. 18, 2011).

> “The court sided with the auction houses, noting that the Constitution prohibits states from controlling ‘commerce occurring wholly outside’ of their boundaries.”

Christie’s and Sotheby’s argued in their joint motion to dismiss that the CRRA impeded “the free flow of interstate commerce in violation of the federal Commerce Clause.” The statute’s reach, they said, improperly extended beyond California’s borders. The auction houses also challenged the CRRA under U.S. copyright law (saying it conflicts with the “first sale” provision) and as an unlawful taking of private property. On May 12, 2012, the court sided with the auction houses, noting that the Constitution prohibits states from controlling “commerce occurring wholly outside” of their boundaries. Reasoning that the CRRA would apply — hypothetically — to a sale taking place within New York State, of an artwork by a New York artist to a New York resident, with the only California link being a seller living in California, the court concluded that the statute impermissibly affected commerce outside of California.

The court went on to strike down the statute in its entirety, even though it could have eliminated only its unconstitutional provisions. It reasoned that because the California legislature had originally considered regulating “*only* sales that took place *in* California,” but decided against that approach — apparently in order to prevent the art market from fleeing “the state to avoid paying the 5% royalty” — it would not have enacted the CRRA “without its extraterritorial provisions.” Thus, the court refused to take action that would have resulted in “a law the legislature clearly never intended to create.”

In taking issue with the ruling, which is now on appeal to the 9th Circuit, Dr. Feder told IFAR that he knew of “absolutely no instance in which a sale that takes place . . . let’s say in New York, of a work by an artist residing in New York, somehow invokes the CRRA.”[4] In any case, he noted, the CRRA’s impact on interstate commerce has been at most “de minimus” and not “substantial” enough to violate the Constitution.

THE PUSH FOR A FEDERAL LAW

In the meantime, Feder and others are championing proposed federal legislation that would extend *droit de suite* to artists nationwide. If passed, the bill, known as the Equity for Visual Artists Act of 2011, would require large auction houses (those having annual sales of over $25 million) — but not private sellers, art galleries, art dealers or exclusively Internet-based auction sites — to pay a 7% royalty on sales over $10,000,[5] with, significantly, no cap on the amount. Like the California law, the royalty would not apply to initial sales by the artist, and the amount would be based on the total sale price. A “visual artists’ collecting society” would collect the royalties, of which it would (after taking out its administrative expenses) distribute half to the artist and half to an account to be used by art museums to purchase artworks by living U.S. artists. The bill’s sponsors — Sen. Herb Kohl (D-Wis) and Rep. Jerrold Nadler (D-N.Y.) — have said that the proposed legislation, which remains in committee, is intended to give visual artists royalty rights similar to those already enjoyed by authors, playwrights, composers and musicians under the copyright laws.[6]

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[4] The appeal will be heard under the caption *Sam Francis Foundation v. Christie’s*, No. 12-56067 (9th Cir., filed June 7, 2012).

[5] The Equity for Visual Artists Act of 2011 (H.R. 3699, S. 2000) was introduced to the House of Representatives and the U.S. Senate on December 15, 2011. On January 6, 2012, it was referred to the House Subcommittee on Intellectual Property, Competition and the Internet. On that same day, it was referred to the Senate Committee on the Judiciary.

[6] Feder, Frank Stella and Christiane Ramonbordes discussed the proposed national *droit de suite* law in “Resale Royalties and the Visual Arts: Should *Droit de Suite* Come to the U.S.,” a panel discussion organized by the ARS and published in Vol. 12, no. 4 of the *IFAR Journal*. They argued that the law would create parity between the U.S. and Western Europe, and that it is fundamentally fair for visual artists to benefit when their artworks increase in value.

Not everyone, however, is so enamored with the idea of *droit de suite* in the U.S. In a Letter to the Editor in *IFAR Journal*, Vol. 13, nos. 1 & 2, John Henry Merryman, professor emeritus at Stanford Law School, opposed the idea as making "rich artists richer," while providing no benefit to less established artists, because only "successful artists" enjoy a "significant resale market." That letter spurred the lively debate in the Letters section of this issue (pp. 2-3) between Feder, Merryman and Hattula Moholy-Nagy.

The 9th Circuit is likely to hear the *Estate of Robert Graham* and *Sam Francis Foundation* appeals early next year. Meanwhile, if the federal Equity for Visual Artists Act of 2011 becomes law — unlikely given the current tenor in Congress — it will put to rest the Commerce Clause issues plaguing the California statute by extending resale rights to artists in *all* states.

— **S.F.** AND **M.M.R.**

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COURT DISMISSES CASSIRER SUIT OVER DISPUTED PISSARRO AND STRIKES DOWN SECOND CALIFORNIA STATUTE FAVORABLE TO HOLOCAUST CLAIMS

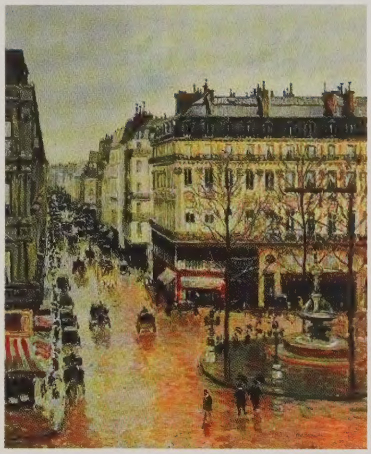

FIGURE 1. CAMILLE PISSARRO. ***Rue Saint-Honoré. Après-midi, Effet de Pluie*, 1897. Oil on canvas, 81 x 65 cm. Collection of the Museo Thyssen-Bornemisza, Madrid.**

On July 17, a California federal district court reaffirmed its May dismissal of *Cassirer v. Thyssen-Bornemisza Collection Foundation*,[1] a protracted lawsuit over a Camille Pissarro painting brought by the heirs of Lilly Cassirer Neubauer, a German Jew who had been forced to sell the work to the Nazis in 1939. The court held that the six-year statute of limitations on which the heirs' claim depended was unconstitutional.

Ironically, the statute had been carefully drafted in 2010 in order to avoid that very problem, after a predecessor statute was struck down the year before.[2] Although, unlike the earlier version, the 2010 statute did not reference the Holocaust or limit its reach to Holocaust-related claims, the court concluded that its *real purpose* remained the same: to "create a friendly forum for litigating Holocaust restitution claims." Thus, said the court, California had improperly intruded upon the federal government's exclusive, constitutional power to conduct foreign affairs. The heirs plan an appeal, but if the ruling stands, it will be the second major blow to California's reign as an especially friendly forum for Holocaust stolen art claims.

As the *IFAR Journal* has previously reported,[3] Cassirer Neubauer's grandson, Claude Cassirer (who died in 2010), learned in 2000 that Pissarro's *Rue Saint-Honoré, après-midi, effet de pluie*, a painting his grandmother was forced to sell to the Nazis in order to leave Germany, had become part of the Thyssen-Bornemisza Collection

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[1] *Cassirer v. Thyssen-Bornemisza Collection Found.*, No. 05-CV-3459-GAF, slip. op., (C.D. Cal. May 24, 2012).

[2] *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954 (9th Cir. 2010).

[3] See Carla Shapreau, "Nazi-Era Restitution Lawsuits – New Developments in the California Courts," *IFAR Journal*, Vol. 10, no. 2 (2008); Sharon Flescher, "A Surprise Move in Pissarro Painting Battle: Cassirer Heirs Drop Case Against Spain," *IFAR Journal*, Vol. 12, no. 4 (2011).

"Although, unlike the earlier version, the 2010 statute did not reference the Holocaust or limit its reach to Holocaust-related claims, the court concluded that its real purpose remained the same: to 'create a friendly forum for litigating Holocaust restitution claims'."

in Spain.[4] Five years later, Cassirer sued the Thyssen-Bornemisza Collection Foundation (the "Foundation") and the Kingdom of Spain, which administered the private collection. Cassirer's claim initially seemed to be timely: the statute of limitations then applicable to actions "to recover Holocaust-era artworks" was Cal. Civ. Proc. Code § 354.3, which gave claimants until the end of 2010 to file suit. In August 2009, however, the U.S. Court of Appeals for the 9th Circuit struck down § 354.3 in another case, *Von Saher v. Norton Simon Museum of Art.*[5] It held that the statute would effectively turn California into "a world-wide forum for the resolution of Holocaust restitution claims" — a "laudable goal," but one that intruded upon the federal government's exclusive power to "make and resolve war."

The California legislature responded in 2010 by amending Cal. Civ. Proc. Code § 338(c), the state's general three-year statute of limitations applicable to personal property claims, by providing claimants six years in which to sue museums, galleries, auction houses or art dealers for the return of artworks stolen after 1910. The 2010 amendments specifically covered any pending cases — including *von Saher* and *Cassirer* — that had fallen under the Holocaust-era statute.[6] It also expanded the limitations period for many art loss claims having nothing to do with World War II.

On August 12, 2010, Cassirer won a significant victory when the 9th Circuit allowed him to proceed not only against the Thyssen-Bornemisza Collection, but also against Spain, rejecting Spain's claim of sovereign immunity.[7] Claude Cassirer died at the age of 89 a month and a half after the ruling, and his heirs opted to continue the case. In 2011, the case was remanded to the district court, but the heirs unexpectedly dropped their claims against Spain at the urging of the U.S. Department of State.[8] The Foundation — the only remaining defendant — moved to dismiss. It argued that, like the Holocaust-era statute that the 9th Circuit had struck down in *von Saher*, the 2010 amendments to Cal. Civ. Proc. Code § 338(c) infringed upon the federal government's exclusive right to conduct foreign affairs. The Foundation also argued that California's *retroactive* enactment of § 338(c) violated its rights under the First and Fourteenth Amendments to the Constitution.

On May 24 of this year, the United States District Court for the Central District of California sided with the Foundation. Without reaching the Foundation's other arguments, it held that the amendments to § 338(c) were "functionally equivalent" to § 354.3 in that they were adopted in order to make California a "friendly forum" for litigating Holocaust claims. Characterizing the passage of the § 338(c) amendments as an attempted "end run" around *von Saher*, the court found that the new statute of limitations, "though worded differently in an attempt to appear of general applicability," had the "identical purpose" as § 354.3. Thus, it ruled that California had overstepped its authority by creating "a remedy for wartime wrongs through California courts."[9] On June 20, 2012, the Cassirer heirs asked the district court to reconsider its ruling, arguing that the May ruling had misstated aspects of German law (as to whether post-war German reparations paid to claimants divested them of title or prevented them from making future claims of ownership). On reconsideration, the court concluded that whether or not it had been misstated, German substantive law had no bearing on its finding that the California statute was unconstitutional under the foreign affairs doctrine. It thus refused to change its decision.

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[4] The painting was purchased in the United States in 1976 by the Baron Hans-Heinrich Thyssen-Bornemisza, who later sold it to the defendant Thyssen-Bornemisza Collection Foundation in 1993.

[5] *Von Saher v. Norton Simon Museum of Art at Pasadena*, 578 F.3d 1016 (9th Cir. 2009), *amended by* 592 F.3d 954 (9th Cir. 2010), *cert. denied*, 2011 U.S. Dist. Lexis 4810 (2011). See Shapreau, op. cit., Vol. 10, no. 2 and Vol. 13, nos. 1& 2.

[6] The bill was conceived and promoted by one of von Saher's attorneys, E. Randol Schoenberg. Schoenberg had also previously represented Cassirer in a suit against Stephen Hahn, the art dealer who had sold the Cassirer family's art to Baron Hans-Heinrich Thyssen-Bornemisza. *Cassirer v. Hahn*, No. 01158698 (Santa Barbara Super. Ct., filed July 19, 2004).

[7] *Cassirer v. Kingdom of Spain*, 616 F.3d 1019 (9th Cir. 2010). The ruling found that Spain could be sued under the "expropriation exception" to the Foreign Sovereign Immunities Act, 28 U.S.C. § 1605(A)(3).

[8] See Flescher, *op. cit.*, Vol. 12, no. 4.

[9] The court noted that the amendments had been drafted in response to the *von Saher* decision and the "idea" for it came from von Saher's own counsel.

In July, the Cassirer heirs filed a notice of appeal to the Ninth Circuit.

— **S.F.** AND **M.M.R.**

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A BUSY PERIOD AT CPAC

U.S. RENEWS IMPORT AGREEMENTS WITH FIVE COUNTRIES AND SIGNS AN AGREEMENT WITH GREECE

The past two years have been busy ones for the Cultural Property Advisory Committee (CPAC), the State Department body tasked with making recommendations to the President regarding requests from foreign countries to restrict importation into the United States of designated types of cultural objects considered to be "at risk."[1] Since January 2011 alone, the U.S., through CPAC, has renewed Memoranda of Understanding (MOUs) with five countries; enacted one first-time MOU; and held hearings concerning two other extensions and two first-time requests.

Under the U.S. Cultural Property Implementation Act (CPIA) of 1983 — the implementing legislation for the 1970 UNESCO Convention[2] — countries seeking U.S. import restrictions on their endangered cultural property must submit a formal request to CPAC, which reviews the request and makes a recommendation to the President or his designee, the State Department. If the request is granted, the U.S. and the requesting country sign a MOU, a bilateral agreement, outlining the terms, including the steps both countries intend to take to restrict the flow of designated objects into the United States. The MOUs remain in effect for a period of five years, after which the requesting country may seek an indefinite number of five-year extensions, subject to renewed U.S. approval.

> "The January 2011 extension of the MOU with Italy added coins . . . to the list of restricted items . . . The issue of whether to restrict the importation of ancient coins has been contentious ever since it was first introduced in the MOU extension with Cyprus in 2007."

Currently, the U.S. has MOUs in effect under the CPIA with 13 countries (as well as unilateral restrictions on material imported from Iraq).[3] With one exception (Canada), every country that has signed a five-year MOU with the U.S. has sought, and been granted, five-year extensions.

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[1] For more about the composition and operations of CPAC, see: "The Who, What, Why and How of the Cultural Property Advisory Committee (CPAC)," *IFAR Journal*, Vol. 10, nos. 3&4, pp. 24-55.

[2] The full title is: *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, 17 November 1970.

[3] For the full texts of the MOUs, see IFAR's website: http://www.ifar.org/art_law.php and the website of the U.S. State Department: http://exchanges.state.gov/heritage/index.html. The latter site also contains images of types of restricted objects.

Since January 2011, the United States has granted five-year extensions to:

- Italy (effective 19 January 2011)
- Colombia (effective 15 March 2011)
- Bolivia (effective 2 December 2011)
- Peru (effective 9 June 2012)
- Cyprus (effective 16 July 2012)

In addition, the U.S. enacted a first-time five-year agreement with Greece (effective 1 December 2011).

While the MOU with Bolivia was extended without changes, the MOU extensions with Italy, Colombia, Peru, and Cyprus all contained an amended Article II, encouraging each country to: improve the protection and documentation of its cultural property; educate its people about the objects; and cooperate with American institutions through joint archaeological digs and loans of cultural objects for study and exhibition in the United States. These changes would appear to be in response to criticism from the collecting community that, contrary to the intent of the CPIA, the requesting countries have not been doing all they can to reduce the risk of looting or make cultural objects available to U.S. institutions for study and exhibition.

The January 2011 extension of the MOU with Italy, mentioned above, also added "coins of Italian types produced from the 9th century B.C. to 37 A.D." to the list of restricted items, an addition that was strongly opposed by the coin collecting community. The issue of whether to restrict the importation of ancient coins has been contentious ever since it was first introduced in the MOU extension with Cyprus in 2007. (Coins were later included in the 2009 MOU extension with China.)

The most recent amendments to the agreement with Cyprus, signed as *IFAR Journal* was going to press and effective July 16, 2012, go beyond changes to Article II. The new MOU expands the list of prohibited items to include ecclesiastical and ritual materials from the Post-Byzantine period (roughly 1500 to 1850 AD). Ancient and Byzantine Era material was already restricted under previous MOUs. As with all MOUs, objects that fall into the restricted categories are not allowed into the U.S. as of the effective date of the renewed agreement, unless the importer can show that the objects left their country of origin prior to the effective date, or that they have valid export certificates.

Further action by CPAC is expected shortly, as the Committee has recently held public hearings and private meetings to consider:

- first-time requests for MOUs from Belize and Bulgaria (November 15-17, 2011), and
- extension requests by Guatemala and Mali (April 24-27, 2012). The current agreements expire on September 29 and September 19, 2012, respectively.

The ongoing military conflict in Mali may play a role in the Committee's deliberations on that country's request.

GREECE

The new bilateral agreement with the Government of the Hellenic Republic protects categories of archaeological material from Greece dating from the Upper Paleolithic Period through the 15th century A.D., as well as Byzantine ecclesiastical ethnological material through the 15th century A.D. Although the MOU with Greece, like those of Cyprus and China, includes coins among its restricted items, the agreement initially caused a stir for an altogether different reason; there was a considerable — and exceptional — delay between the announcement of the agreement by Secretary of State Hillary Clinton and its actually taking effect. Clinton publicly signed the MOU on July 17, 2011, while on a diplomatic visit to Greece, but details of the agreement were not made public in the U.S. at that time. The Greek legislature did not approve the agreement until November 21, 2011, and it was not published in the U.S. Federal Register, and, therefore, restrictions did not go into effect, until December 1, 2011. Critics have suggested that Clinton signed the agreement when she did in an effort to seek concessions from the Greek government during its tense economic negotiations with the European Union.

COMMITTEE CHANGES

While CPAC has been issuing its recommendations, the composition of the Committee itself has been changing. By law, CPAC members are appointed by the U.S. President and serve renewable three-year terms. There are slots for eleven members, intended to represent the interests of different constituencies within the cultural property world: three represent the interests of the general public; three must be expert in "archaeology, anthropology, ethnology, or related fields;" three must be expert in the "international sale of cultural property;" and two represent the interests of museums.

In just the past year, President Obama appointed seven new members, including a new chairman, Patty Gerstenblith, a lawyer and trained archaeologist, who became chair in October 2011. CPAC has not seen such significant turnover since 2008.

Below are the recent appointees, and the constituencies they represent:

- **Patty Gerstenblith** (Chairman), Professor of Law and Director of the Center for Art, Museum and Cultural Heritage Law, DePaul University Law School, who previously served on the Committee from 2000 to 2003 [the PUBLIC]
- **Rosemary A. Joyce,** Professor of Anthropology, University of California at Berkeley [ARCHAEOLOGY]
- **Marta de la Torre**, former director of the Museum Studies Graduate Certificate Program at Florida International University, who previously served on the Committee from 2003 until 2008 [the PUBLIC]
- **Jane Levine**, Director of Compliance at Sotheby's, former Assistant U.S. Attorney and Art Fraud Coordinator for the Southern District of New York [TRADE IN CULTURAL PROPERTY]
- **Nina M. Archabal**, Director Emeritus of the Minnesota Historical Society [MUSEUMS]
- **Barbara Bluhm-Kaul**, trustee of The Art Institute of Chicago and the Aspen Art Museum [the PUBLIC]
- **Lothar von Falkenhausen** , Professor of Chinese Archaeology, UCLA, who was just appointed by President Obama in May 2011 [ARCHAEOLOGY]

In addition to the seven new appointees, three Committee members were re-appointed:

- **Katharine Lee Reid**, former director of the Cleveland Museum of Art, and Chair of CPAC from 2008 to 2011 [MUSEUMS]
- **Nancy Clausen Wilkie**, Professor of Classics, Anthropology and the Liberal Arts, Carleton College, who has been a member of the Committee since 2003 [ARCHAEOLOGY]
- **James Wright Willis**, founder of James Willis Tribal Art, who has been member of the Committee since 2003 [TRADE IN CULTURAL PROPERTY]

As of this writing, one seat on the Committee, representing the international trade of cultural property, remains vacant.

— **S.F.** AND **NICHOLAS DIETZ,**
IFAR LEGAL RESEARCH ASSOCIATE

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WARHOL BOARD STOPS AUTHENTICATING: ISSUES AND FALLOUT

An *IFAR Evening*, December 7, 2011

INTRODUCTION

On December 7, 2011, IFAR hosted a sold-out IFAR Evening at the Grolier Club in New York dealing with the issues surrounding, and anticipated fallout from, the Andy Warhol Foundation's decision to disband its Authentication Board as of January 2012 in the wake of lawsuits that were expensive for the Foundation to defend. Several other artist-endowed foundations said that they, too, would stop authenticating or would change their procedures. To address the situation from multiple perspectives, IFAR assembled a panel of six distinguished speakers from the worlds of art and law. Although the President of the Warhol Foundation was also invited, he was unable to participate.

While the Evening, by design, did not focus on the Warhol lawsuits, including the most prominent, Simon Whelan v. The Andy Warhol Foundation for the Visual Arts, Inc., it was, as IFAR's Executive Director, Dr. Sharon Flescher, noted in her opening welcome, the "elephant in the room." She also noted that IFAR was "not a disinterested party" to the topic, as IFAR's own Authentication Research Service had been receiving inquiries as to whether it would begin reviewing purported Warhols. The answer then, and now, is "not at the moment," given the need to reflect on the situation in light of the continued existence of the Warhol Foundation's catalogue raisonné project.

In attendance at the IFAR Evening were several representatives from the media, who later reported on it in ARTnews, ArtNet Magazine and The Art Newspaper, among other publications.

Given the Evening's popularity and the continued interest in the topic, IFAR followed the New York program with a similar one at the Los Angeles Fine Art Show on January 22, 2012. That program, whose proceedings are not included here, featured four distinguished West Coast speakers, in addition to Dr. Flescher: Debra Burchett-Lere, Director, The Sam Francis Foundation; Richard Grant, Executive Director, The Richard Diebenkorn Foundation; Dr. Barbara Guggenheim, Founding Partner, Guggenheim, Asher, Associates; and Christine Steiner, Special Counsel, Sheppard Mullin Richter & Hampton, LLP.

The New York program was capped by a reception in the Grolier Club's library. The following is an edited version of the six New York talks and the Q&A.

Christine Vincent at center, flanked by, left to right, Robert Storr, Jack Cowart, Peter Stern, Jack Flam, and David Nash.

SPEAKERS (IN SEQUENCE):

ROBERT STORR
Professor of Painting and
Dean, Yale University School of Art

CHRISTINE VINCENT
Study Director, The Aspen Institute's
National Study of Artist-Endowed Foundations

JACK FLAM
President, Dedalus Foundation
Distinguished Professor Emeritus, CUNY

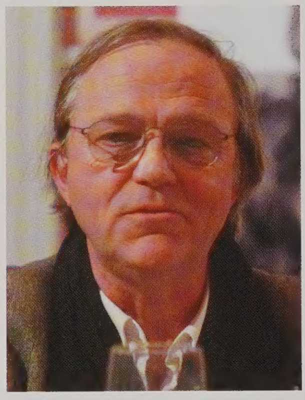
JACK COWART
Executive Director, Roy Lichtenstein Foundation

PETER R. STERN
Of Counsel, McLaughlin & Stern, LLP
Chairman Emeritus, Volunteer Lawyers for the Arts

DAVID J. NASH
Co-owner, Mitchell-Innes & Nash
Former Executive Vice President, Sotheby's

AN OVERVIEW

ROBERT STORR*



I want to start by simply stating the obvious; problematic issues regarding originality and authenticity are intrinsically embedded in the production of art in *all* periods, but the contingencies that tend to call these concepts into question change. The existence of academies (going back to the Carraccis in the late sixteenth century), and the apprenticeship system that preceded those academies and continued in various forms even after their heyday, meant that in any given "atelier" were to be found assistants making art "in the manner of" the "master." The value placed then upon the work made under a master's direction but not necessarily by his hand was different than the one that we currently place on "the original" because not only did one have such studio production, but "Old Masters" or their assistants often created multiple versions of popular compositions. In some cases they would then make multiple prints of those same subjects. Apprentices or journeyman members of the studio participated in this production to a greater or lesser extent, such that deciding who painted a Rubens — when the top corner is Frans Snyders and the bottom corner is Van Dyck, or only parts of, in the middle and the finishing touches, are by Rubens himself — requires connoisseurship of a high order since there is rarely such a thing as an absolutely original Rubens, other than the sketches he made to initiate this process, but the contributions of others can match his in terms of distinction or quality.

There were a number of highly qualified people working in Rembrandt's studio, many of whom went on to make substantial careers of their own: among them Gerrit Dou and Carel Fabritius. The volume of production he was engaged in was extraordinary. There is a tendency now to bemoan the idea of art being cranked out for the market, but *never* was that truer than in the Baroque period in Holland — Svetlana Alpers, for one, has written about this with great insight and, dare one say it, scholarly "originality" — and in Renaissance Italy before that time, "assembly line" art production had been a going commercial enterprise, *pace* Andy Warhol, art-as-business. Accordingly, the attribution and re-attribution of works that came out of Rembrandt's studio has itself become a full-time academic industry. Not so long ago there was a massive scything of the Rembrandt cannon, after which some paintings that had been ascribed to studio assistants were judiciously restored to full masterpiece status even though they have the fingerprints of other hands all over them.

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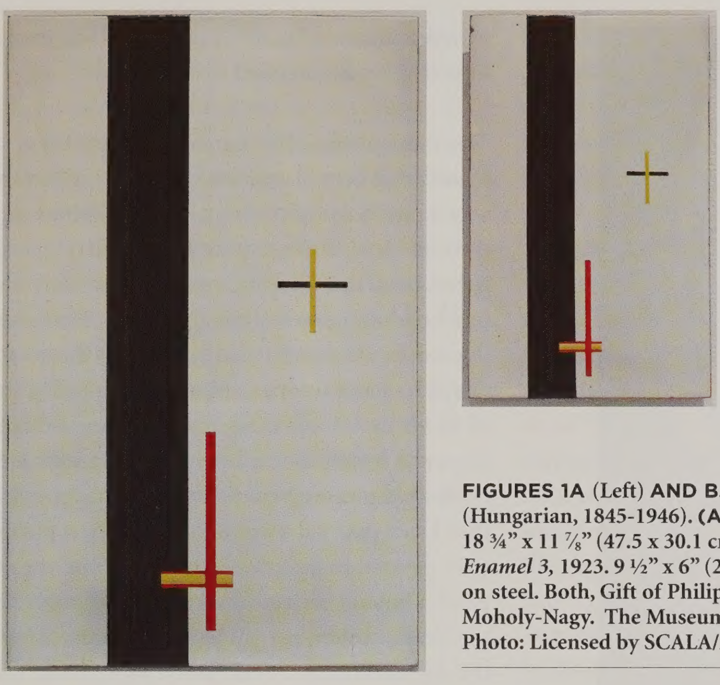
* Robert Storr is an artist, critic, and curator, and, since 2006, Professor of Painting and Dean of the School of Art at Yale University. He is also currently Consulting Curator of Modern and Contemporary Art at the Philadelphia Museum of Art and a member of IFAR's Art Advisory Council. From 1990 to 2002, Professor Storr was a curator in the Department of Painting and Sculpture at the Museum of Modern Art, New York, and in 2002 was named the first Rosalie Solow Professor of Modern Art at the Institute of Fine Arts, New York University. In 2007, Mr. Storr was commissioner of the Venice Biennale, the first American invited to assume that position.



FIGURES 1A (Left) AND B. LÁSZLÓ MOHOLY-NAGY (Hungarian, 1845-1946). (A) *Construction in Enamel 2,* 1923. 18 ¾” x 11 ⅞” (47.5 x 30.1 cm). (B - Right). *Construction in Enamel 3,* 1923. 9 ½” x 6” (24 x 15 cm). Both, porcelain enamel on steel. Both, Gift of Philip Johnson in memory of Sibyl Moholy-Nagy. The Museum of Modern Art, New York. Photo: Licensed by SCALA/Art Resource, NY.

These matters demand that we make “nice” art historical distinctions, to use that word in an old-fashioned sense. Traditional connoisseurship is one way of addressing them; forensic study is another way, but regardless of the method or combination of methods employed, “experts” are rarely able to provide definitive answers. The idea that there *are* definitive answers in broad areas of this kind of work is a troublesome fiction, so it is unsurprising that frequent disagreements arise. I will just say, up front, that I am in favor of such disagreement. What dismays me about the present situation is that disagreement can come at a high price to the people who debate the status of the most hotly contested works, one that is disproportionate to those whose “investment” in the process of arriving at judgments about things made by other people is primarily if not exclusively intellectual or aesthetic. Because public focus, driven by the market and the courts of law, has shifted attention decisively toward issues of possession, of the “rights” that attend ownership, of financial value and return, and these factors have skewed all other discussions, or, at least, are in danger of doing so.

“What dismays me about the present situation is that disagreement can come at a high price to the people who debate the status of the most hotly contested works, one that is disproportionate to those whose ‘investment’ in the process of arriving at judgments about things made by other people is primarily if not exclusively intellectual or aesthetic.”

ORIGINALITY AND AUTHENTICITY

In the modern period, questions of originality and authenticity morphed in response to the invention of art made by machinery — chiefly the printing press and the camera — in short the proverbial “work of art in the age of mechanical reproduction” as codified by Walter Benjamin. Art was confronted by a wide array of possibilities for making things that would render any “original” infinitely reproducible, or at least reproducible in fairly large numbers. In turn these possibilities also became a field of play, a place where artists could confound those who clung to ideas about the value of a work of art being attached to its autograph incarnation.

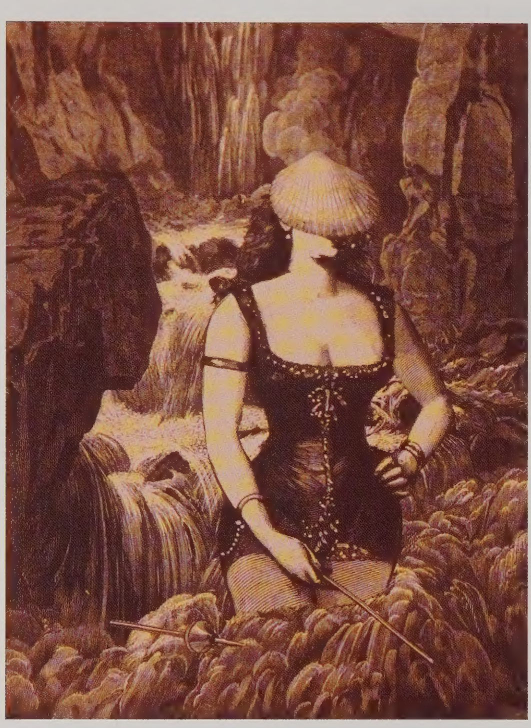


FIGURE 2. MAX ERNST (German, 1891-1976). *Une Semaine de Bonté,* 1934. Deuxième Cahier: Lundi: élément: l'eau, 4th plate. ©2012 Artists Rights Society (ARS), New York/ ADAGP, Paris.

Thus, on the one hand, you had Constructivists and all of the allied schools of the 1910s, '20s and '30s gleefully turning towards means that would allow for the production of *many* copies of a thing, and dreaming utopian dreams of doing exactly that virtually ad infinitum for a newly-empowered and newly-enlightened working class. In the current installation of the collection of the Museum of Modern Art, there are two enameled copper panels that Lázló Moholy-Nagy "phoned in" to a factory in Germany and had fabricated in two different sizes **(FIGS. 1A AND B)**. I defy anyone to tell us how one is more "original" than the other since what is truly unprecedented — or nearly so — is the idea of making art in this way, a way that Tony Smith among others would further develop in the later decades of the 20th century. To my knowledge, Moholy-Nagy only did this once, but he could have done it dozens, indeed hundreds or thousands or ten of thousands, of times. And had he, maybe not the whole of the working class, but more of us would possess a Moholy-Nagy in the "original" state in which it was intended to be seen.

The Surrealists played a great deal with these ideas, as well, but they played with them in a different way. I own a complete copy of *Une Semaine de Bonté* **(FIG. 2)** by Max Ernst, plus perhaps fifty unbound sheets from the "original" edition that were bought in a London bookshop for a pittance. The work is a masterpiece of Surrealism, one of the greatest works by Ernst in any medium. It is a collage novel of which each individual image is composed of disparate fragments culled from nineteenth-century book illustrations, wood and steel plate engravings that Ernst patched together to make new plates that were printed in fascicles on subscription, the overall project having been underwritten and published by the artist, author, patron Roland Penrose. However, the several hundred anticipated copies didn't sell out entirely, so when Penrose died, the bookseller who purchased that part of his estate ended up with all the loose pages.

"So what is the 'original,' what is the 'copy,' what is the usefulness of any of these words?"

I taught a course at the Institute of Fine Arts, and I gave every member of my class one of the unbound sheets from this book, which cost me all of about four pounds apiece, saying: "This is your chance to own an original Max Ernst." Because it *is* the original Max Ernst. The initial collages, that Werner Spies included in his exhibition and book of Ernst collages, are very interesting, but they have discolored unevenly — because the papers on which the component fragments are printed vary; because the glue Ernst used and the aging it undergoes has affected different pages differently; and so on — and are no longer beautiful in the way they must once have been. Moreover, the original is *not* the collage; it is a precious relic of the *process* of making, but it isn't the work. The work is the page, which is in fact uniform in its characteristics, unsigned, and was *meant* to be distributed in this fashion. Now, to own an original Max Ernst, which is unique only in the sense that there are a finite number of them altogether, but not unique in the sense of being a page that does not exist in any other form anyplace else, is an interesting proposition. The existence of so many equivalents effectively *subverts* of the idea of originality. For instance, only the bound, slip-cased fascicles are numbered — so far as I am aware none are signed — but the unbound pages are not, so one doesn't know, when one gets to the unbound pages, whether this example is number one of three hundred fifty-seven or number fifty-two of three hundred fifty-seven; all you know is that it was made under Ernst's instructions to his own specifications.

Let's turn to the vintage photography market. Once upon a time not too long ago, there wasn't a "vintage photography" market as such, although there has long been a photography market. The focus on vintage work was a function of pressures to narrow the field of saleable objects, and by scarcity, increase the value of certain ones. In the case of Ansel Adams, a signed vintage photo means something because Adams took great pains to print his own work in the most exacting way. In the case of Henri Cartier-Bresson, a signed "vintage" picture doesn't mean all that much relative to later signed versions, because Cartier-Bresson, generally speaking, handed his negatives to printers, who then processed them for use in publications according to the picture magazine industry standard. The vintage contact sheets of Cartier-Bresson are of special interest, but the sort of prints he just sent out to editors as a part of his work for Magnum are not intrinsically precious. And while vintage Walker Evans images retain a certain aura, the truth is that if that image belongs to the Farm Security Administration period, an Evans made from a copy negative is something that you can still buy — or at any rate until recently could buy — from the Smithsonian, for about fifty dollars because the original negative and the right to reproduce the picture are owned by the federal government as works produced under its auspices during the Great Depression. So a vintage Walker Evans *printed* by Walker Evans is a wonderful thing to behold, but an equally beautiful Evans printed by the Smithsonian from a copy negative is a nonetheless *genuine* print in terms of how such images were intended to be reproduced and distributed.

The varying incarnations of the work of the photographers Seydou Keitah and Malick Sidibé, both of whom had studios in Bamako, the capital of Mali, raise additional issues. They took pictures of people who lived in or came to the city and were paid to do so by their subjects. They were the "recording angels" of their community. Now, Sidibé, whom I know quite well, would sometimes make only a single exposure because film was expensive, and then made only one or two prints, because the client had no need of or no money for more. So there are very few "vintage" Sidibé photographs in circulation because the "originals" are owned by people who live in Bamako or in villages scattered around it. Furthermore, at least so far, there has not been that much demand for them either, because they were not "beautifully" produced in commercial formats by studio photo printers. So most of what we see on the market are enlargements from the original negatives — or perhaps copy negatives — made by dealers of varying degrees of scrupulousness for sale to North American and European art collectors. Some are absolutely gigantic, but to the extent that the printers have been able to control the tonal values — both photographers were skilled technicians of the medium — they are stunning. Yet, the aesthetic merit and the psychological impact of those prints varies a great deal because of how, from one picture to another, scale alters the way we encounter the subjects. In any event, these enlargements are not the "authentic" images that made Sidibé the world renowned artist that he is, or Keitah the equally remarkable artist that he was. They don't resemble the works of art that I have seen in situ, and they aren't the works of art that either artist originally made. So what is the "original," what is the "copy," what is the usefulness of any of these words?

Felix Gonzalez-Torres, an artist whom I greatly admire, quite purposefully made things in unlimited editions. Thus his stacks are composed of his own graphic or photographic imagery printed in quantities sufficient to last the duration of the exhibition where they appear, during which time visitors are invited to take them away. If the museum or gallery is playing by the rules, which they are morally as well as contractually obligated to do, you are free to take one sheet or two or more; you can give one to your nearest and dearest, and so long as the piece is in place, the venue is bound to keep producing them *ad infinitum*. The Constructivists felt that somehow or other the revolutionary powers that be would figure out a way to distribute everything to the working class through mass production, but Felix, an offspring of the failed Cuba revolution, understood that it was more efficient to get museums or collectors to do it for him because they have more money.

"...when conversation fixates on a particular case of fraud, forgery, or, to put it more mildly and perhaps less vulnerably from a point of view potential litigation, 'dubious practices,' people tend to go back to definitions of 'originality' and 'authenticity' that they have carelessly or conveniently forgotten are historically untenable."

Then of course, there are Sol Lewitt's Wall Drawings, of which one hundred are currently on view in the magnificent quarter-century-long exhibition at MASS MoCA. These Wall Drawings were executed by teams of trained assistants and volunteers working according to LeWitt's instructions. What *he* made was a single annotated "original" sketch that serves as the model for the actual mural work. As with music, every performance of that drawing from its "original" iteration until — Fortune forbid — they cease being recreated will be different to some degree. The parameters were set by the artist; the right to realize the work and the manner of realizing it follow conditions dictated by him, but the work itself is rarely of his doing. He was very frank about this, in effect saying, "The fact that I don't make things out of wood is because I'm not very good at carpentry. So I delegate that to people who can make them to my specifications. And while I am a good draftsman, the same delegation makes the Wall Drawings possible."

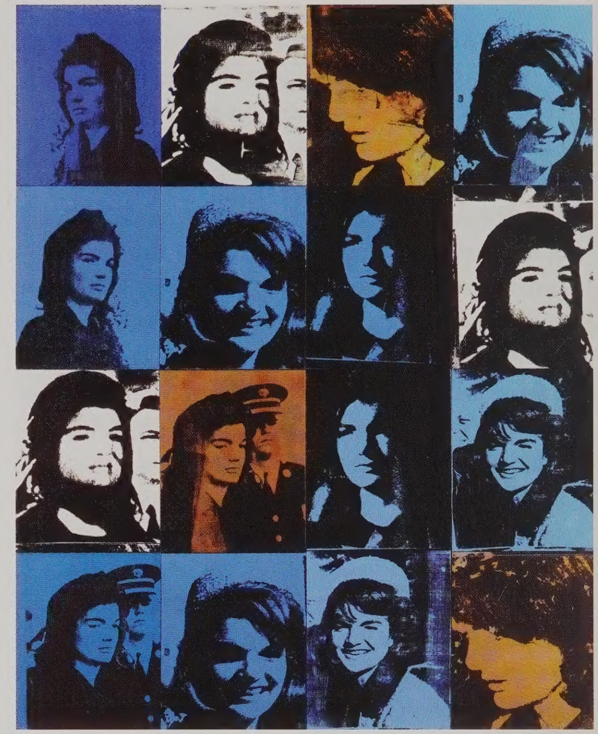


FIGURE 3. ANDY WARHOL (American, 1928-1987). *Sixteen Jackies* (in 16 parts). Posthumous assemblage of 16 separate "Jackies," each dating from 1964; each, acrylic and silkscreen ink on canvas.

The previous examples and arguments are things that everyone knows well, but it is nevertheless useful to throw them back into consideration as often as possible, because when conversation fixates on a particular case of fraud, forgery, or, to put it more mildly and perhaps less vulnerably from a point of view potential litigation, "dubious practices," people tend to go back to definitions of "originality" and "authenticity" that they have carelessly or conveniently forgotten are historically untenable. In such circumstances it is easy for those defending themselves against questionable challenges to their own questionable practices to cite historical precedent as proof that the accusations being made are naive, that "things have always been like this," all with the aim of preventing more probing examination of the doubtful activities in which they are engaged.

ANDY WARHOL

Take Andy Warhol's oeuvre as a case in point. No body of work and no artist presents more possibilities for misunderstanding and mischief than he. I was on the Andy Warhol Foundation board for the period of the initial phases of the Simon-Whelan lawsuit, so I am not going to comment on it directly. But there are many things to be said about Warhol that will not lead me into that booby-trapped territory. Warhol, of course, opened up this territory, because, of all the people who explored its aesthetic and remunerative potential, he was the most ingenious and the most uninhibited, and, many believe, the most shameless. He overtly stated that art was business, and that business was art. He delegated artistic labor to an unprecedented extent such that — as he said, ironically — the Renaissance studio basically became a factory — "The Factory." He also used cynicism as a posture.

All of this resonated in a context of rapid economic and social change, and all of this was a part of his art — the performative part of his art. Because at the time he first engaged in these practices, the tie when he wrote *The Philosophy of Andy Warhol,*[1] and, ideas of authenticity and originality were largely keyed to the prevailing ideology of Abstract Expressionism with its Existentialism underpinnings. The contrarian things Warhol did and said were said and done against a broad-based cultural foil that gave them meaning. Indeed, Warhol mentions Bertolt Brecht in the section of his "Philosophy" where he speculates on art-as-business, indicating that he was fully aware of the polemical effrontery of what he was saying. We are a *long* way away from that.

Warhol's perverse "Marxist" caprice has become our "global" capitalist reality such that we have reached the point where there is virtually no foil for such provocations, and where quoting Warhol's statements out of context — I mean out of historical context, as well as out of the context of his own writings — has become an easy alibi for taking liberties that are, to say the least, suspect. And the disturbingly whimsical Warhol persona is used as Exhibit A for still wider-spread practices that inspire still greater suspicion.

"Take Andy Warhol's oeuvre as a case in point. No body of work and no artist presents more possibilities for misunderstanding and mischief than he."

I will cite one situation that has recently come to light. It involves a so-called Warhol that came up for auction at Sotheby's (in May 2011) **(FIG. 3)**. Advertised as *Sixteen Jackies*, the "work" was estimated at twenty to thirty million dollars, and was dated on the primary pages as being from 1964. Sotheby's was skirting the line but played fair by the narrowest definition of the rules of the game. For in the body of the catalogue text they revealed that, in fact, the work had been assembled in the mid-2000s by a collector and had never previously existed in that state before, although the individual panels of which it was composed had good provenances and did date to 1964.

Heretofore, there had been only five *Sixteen Jackies*, and if you look in the Warhol catalogue raisonné, you will find them. That is what catalogues raisonnés are for. Of the five, only one involved three colors. Now — with this so-called work — there are ostensibly six *Sixteen Jackies,* two of them consisting of three colors. The hope of the seller, as you can tell from the estimate, was to push the hammer price of this object towards breaking an auction record for the Warhol market, while providing a windfall for the person who had so "cleverly" — or should we just say cynically, in a manner Andy would have been unlikely to enjoy — usurped the artist's prerogatives and assembled a posthumous Warhol out of one *Jackie*, plus one *Jackie*, plus one *Jackie*, one *Jackie*, and so on, up to sixteen.

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[1] Andy Warhol, *The Philosophy of Andy Warhol: From A to B & Back Again.* (New York: Harcourt Brace Jovanovich, 1975).

As it happened, the work sold for less than its low estimate — which is to say, it sold for a unit price equivalent to what one *Jackie* times sixteen adds up to — plus tax and tip. The person who bought this quasi-fraudulent concoction turns out to have been very shrewd, but the financial gambit involved was in every way distasteful and aesthetically dishonest. There could have been somebody less shrewd. And if there had been two bidders, it might have gone considerably higher. According to the hoped-for scenario, we would have witnessed the creation of an entirely fictive value based on a fictional composition — composing a work and accepting or rejecting any given version of it, as well as the number of examples of it being one aspect of artistry. The preposterous notion that this confection counted as a Warhol was predicated on the idea that Warhol made all the units and, therefore, it was authentic represents the most debased concept of authenticity imaginable.

Why do I care about the shenanigans of wealthy speculators? I own one Warhol. It is a tiny stitched photograph of skeletons produced by the artist for Parkett. In the days when I was writing regularly for the magazine, I used to swap articles for their special edition works. I knew that I would *never* be able to afford another Warhol, so I traded my work for his, and I love it. However, it hardly rates as a stake in his market, and in most situations I could care less about who fools whom in its upper altitudes, although the person who bought the "new" *Sixteen Jackies* is a good friend.

As somebody who cares a great deal about Warhol as an artist, however, I do have another stake in the meaning of his work. The value of a painting or sculpture in dollar or euro terms, or in whatever terms you want, is not my concern. I spent millions for art on MoMA's behalf, which is to say on behalf of public access to important, authentic works. I read about current market fluctuations and particularly market highs with amazement. What really preoccupies me aren't the spikes, but the machinations that push them ever upward. I recall something Gary Indiana once wrote in the *Village Voice* to the effect that if any work of art costs more than a car, it is too expensive. He didn't mean it of course, and I don't quite mean it either, but the point is that we are dealing in a realm of Never-never-land numbers that distort meaning of the things to which they are attached, that become the meaning of those things despite the best efforts of artists to direct our attention elsewhere. Even Warhol's Dollar Sign paintings are diminished in meaning if the conversation shifts to the number of zeroes that follow. Meanwhile, if interested parties are granted "permission" to play fast and loose with Warhol's genuinely open studio system, multiplying versions of the things actually made under his supervision by variations that were not, room for purposeful, venal confusion about attribution begins to yawn wide and our grasp of the true dimensions and overall quality of his achievement begins to come apart at the seams. We have reached a point where few are willing to speak to the issue of whether something is or is not by Warhol, based on disinterested expertise, in cases where the call for authentication is not predicated on the intent to buy or sell, but rather on a desire to know whether that work should be regarded as of Warhol's own doing and so a legitimate part of the mosaic of his accomplishment.

> "If interested parties are granted 'permission' to play fast and loose with Warhol's genuinely open studio system, multiplying versions of the things actually made under his supervision by variations that were not, room for purposeful, venal confusion about attribution begins to yawn wide and our grasp of the true dimensions and overall quality of his achievement begins to come apart at the seams."

It also holds true for many other artists. I am president of the Greenwich Foundation, Robert Ryman's foundation, and we have not yet had the conversation about whether or not to have an authentication board, but people are fleeing this option at such a rate, I suspect that we may not. But what are we supposed to say if a painting ascribed to Ryman comes out of the closet of someone who claims Bob gave it to them? He is and was quite generous, but what about the closets of people at the periphery of his life, people who barely know him or didn't really know him at all? Who says such a painting is or isn't a Ryman, is or isn't a part of the Ryman cannon? Neither Ryman nor the public engaged in his work should be victimized by the existence of bogus work. Yet without proper study and adjudication of these cases, critical discourse and scholarship will lose its bearings altogether. The Jesuitical readings of Warhol's work, writings, and process resulting in the pseudo-history that is being concocted to rationalize the unscrupulous promotion of putative examples of his art, or just plain false ones, is a clear warning. If we don't insist on drawing the line — and by "we" I mean those who believe that intellectual and imaginative values always come before property values — then we are heading into a free-for-all wherein the artist, the public and art, first and foremost, are the long-term losers.

"If we don't insist on drawing the line — and by "we" I mean those who believe that intellectual and imaginative values always come before property values — then we are heading into a free-for-all wherein the artist, the public and art, first and foremost, are the long-term losers."

ARTIST-ENDOWED FOUNDATIONS AND ART AUTHENTICATION

CHRISTINE J. VINCENT*

When I learned that the IFAR program would be titled "Warhol Board Stops Authenticating: Issues and Fallout," I decided that my comments would take their inspiration from Steve Martin's quip on the old medical cliché: "The operation was a success, but the doctor died." To wit — the Andy Warhol Foundation for the Visual Arts prevailed in its recent legal effort, but as an upshot, we no longer have the Warhol Authentication Board. To help illuminate this apparent conundrum, I want to take the opportunity to do three things:

- Give you a bird's eye view of the authentication activities of the emerging artist-endowed foundation field, noting patterns and trends;
- Highlight considerations that are weighed by artist-endowed foundations and their governing boards in deciding to undertake authentication and produce catalogues raisonnés; and

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- Reflect on the optimal role for artist-endowed foundations and their resources in the increasingly complex terrain of art authentication.

My comments are based on research conducted for the Aspen Institute's National Study of Artist-Endowed Foundations, of which I serve as Study Director. That being said, my comments are my own and are not offered on behalf of the Aspen Institute.The Study's findings are presented in a publication available online at the Aspen Institute website.[1] Volume 2 of the Study Report contains a chapter dedicated to considerations and effective practice for artist-endowed foundations with respect to producing catalogues raisonnés and authenticating artworks.

BACKGROUND

For the purpose of the Study, we defined an artist-endowed foundation as a tax-exempt, private foundation created or endowed by a visual artist, the artist's surviving spouse, or other heirs or beneficiaries, in order to own the artist's assets for use in furthering charitable and educational activities that serve a public benefit. I will be focusing my observations on artist-endowed foundations, understanding that authentication activities are undertaken by many other types of entities as well.

The Study's research identified some three hundred artist-endowed foundations, a few of which no longer exist, such as the Mark Rothko Foundation. More of these foundations are being formed each year. When we published the Study Report (November, 2010), our updated count found that extant foundations held almost three billion dollars in assets, half of this being art and intellectual property assets. Many of these foundations bear familiar names, such as the Andy Warhol Foundation for the Visual Arts, the Pollock-Krasner Foundation, the Robert Mapplethorpe Foundation, and the Adolph and Esther Gottlieb Foundation, among others.

Before going further, we should keep in mind two points. First, artist-endowed foundations are not artists' estates. Artist-endowed foundations are nonprofit, charitable entities and their purpose is to benefit the general public. As private foundations, they are regulated under rules established by the federal government and the states to ensure this commitment to public benefit. They differ from artists' estates, which are not nonprofit, charitable entities. Artists' estates can be organized in a variety of ways, but they are entities that operate for the benefit of private individuals. Second, although all artist-endowed foundations are similarly regulated and universally committed to public benefit, they differ significantly among themselves. They have different charitable purposes and hold different types of assets, and their donors might have very different intentions as to how these assets are to be used to support the respective charitable purposes.

> "Artist-endowed foundations have been around since the late 1800s, but they only started being directly involved in catalogue raisonné activities in the 1980s."

PATTERNS AND TRENDS

On to my first objective: the bird's eye view of authentication activities among artist-endowed foundations. One cannot produce a catalogue raisonné without authenticating art; however, one can authenticate art without producing a catalogue raisonné. Artist-endowed foundations have been around since the late 1800s, but they only started being directly involved in catalogue raisonné activities in the 1980s. The first we identified was a catalogue of the artist's prints published by the Barnett Newman Foundation in 1983. Even now, most catalogues raisonnés are not produced by artist-endowed foundations. Artist-endowed foundations, however, are growing in number, and, increasingly, they are choosing to be involved in producing catalogues raisonnés and, therefore, in authentication activities.

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[1] The Artist as Philanthropist: Strengthening the Next Generation of Artist-Endowed Foundations – www.aspeninstitute.org/psi/a-ef-report

As of the Study Report's publication date, more than two dozen artist-endowed foundations indicated that they were actively engaged in producing catalogues raisonnés — and that doesn't include those that have previously completed catalogues raisonnés, the Georgia O'Keeffe Foundation's catalogue raisonné of that artist's works being one example, the Pollock-Krasner Foundation's supplement to the Jackson Pollock catalogue raisonné being another. So this is a small but expanding group.

Artist-endowed foundations are required to use their resources to support their charitable purposes. A foundation's charitable purpose and how its art and intellectual property assets are intended to be used to support that purpose can give rise to two broad motivations for undertaking a catalogue raisonné and by virtue of this, engaging in authentication. Some foundations are created with a charitable purpose to contribute to and disseminate knowledge about the artist, the artist's oeuvre, and the artist's creative principles. It is evident that production of a catalogue raisonné is an activity that fulfills such a charitable purpose.

At the same time, other artist-endowed foundations are not created with a charitable purpose focused on the artist's works. This type of foundation receives art and intellectual property with the intention that these be used as financial assets to fund the foundation's programs. In this instance, there might be another rationale for a catalogue raisonné enterprise, one defined broadly as a mechanism that could help to settle the market for the assets the foundation holds and intends to sell to support its charitable purpose. Likewise, a catalogue raisonné also could help to clarify the intellectual property the foundation owns and intends to license.

In fact, foundations might combine these two motivations toward a catalogue raisonné enterprise — advancing art historical knowledge and exercising asset stewardship. As to patterns in how they conduct these activities, some artist-endowed foundations make grants to fund catalogue raisonnés produced by other entities, most often museums. These are separate, arms-length activities apart from the foundation. Others conduct the catalogue raisonné project directly or in partnership with a museum.

> "A common tactic used by plaintiffs has been to accuse the artist-endowed foundation of monopolistic practices."

Most artist-endowed foundations involved in authenticating artworks do so within the process of producing a catalogue raisonné, and they typically proceed in one of two ways. One might be termed "rolling authentication," meaning ongoing authentication of individual works, usually by a committee meeting several times a year to undertake this activity. The second approach is what might be described as "authentication by virtue of publication." In other words, while the catalogue raisonné is being prepared, authentication opinions are not delivered on individual works, but are withheld pending publication. The body of knowledge is developed around the entire oeuvre and the publication of the catalogue itself is the act of authenticating the works represented in the catalogue.

A final pattern regarding authentication by artist-endowed foundations would be the way these activities are organized administratively — some foundations set up separately incorporated entities as authentication boards; others do not.

Directly pertinent to this IFAR program is the trend of increased litigation against authenticating entities, including artist-endowed foundations. Here are a few bullet points about litigation as it has involved artist-endowed foundations with respect to their authentication related activities:

- It is reasonable to say that litigation is increasing, specifically for foundations with artists whose work has a strong market, a type of foundation that is growing in number.
- Litigation has focused on artist-endowed foundations that decline to authenticate works as well as those that have excluded works from a catalogue raisonné.
- A common tactic used by plaintiffs has been to accuse the artist-endowed foundation of monopolistic practices.
- There has not yet been a decision in which a plaintiff has prevailed against an artist-endowed foundation, but that remains a possibility.
- Litigation expenses are substantial, regardless of whether the foundation prevails. In some cases, courts have mandated foundations' fees be paid by the failed parties. A payment mandated, however, is not necessarily easy to collect.
- We do not know the usefulness of creating a separately incorporated authentication board to protect a foundation's assets in the case of a negative judgment because there hasn't been such a judgment.
- We do know that the usefulness of a separately incorporated entity in protecting against the legal expense of defending such litigation is nominal because litigation has been brought against foundations regardless of the presence of such a separate entity.
- Lastly, a tactic against foundations that hasn't been taken yet would be a complaint by the Attorney General that a foundation is acting in its authentication decisions to benefit an interested party, for example, on behalf of insiders, who themselves own and sell the artist's works.

CONSIDERATIONS IN UNDERTAKING AUTHENTICATION

With respect to considerations weighed by foundations and their fiduciaries — their board members — in undertaking catalogues raisonnés and authentication, I will cite two: one is, in a sense, philosophical or conceptual, and the other is very concrete. For the first consideration, I should credit Stephen Urice, of the University of Miami School of Law, who is preparing a paper in this area. According to Professor Urice, in the view of some, authentication of artworks, absent production of a catalogue raisonné, in and of itself is not a charitable activity, which by definition must be educational or charitable and of benefit to a broad public class. In this view, authentication conducted as a confidential matter between an individual and the foundation benefits a private person — an art collector, art dealer, or auction house — and by itself does not create the kind of public benefit that is the hallmark of charity.

"In sum, this view asks: are fakes a problem that undermines scholarship and the art market? The answer has to be "yes," of course. However, it is not a problem that artist-endowed foundations should spend charitable dollars to solve by providing an authentication service absent a catalogue raisonné."

In contrast, production of a catalogue raisonné produces a permanent scholarly resource that benefits an untold audience of scholars, curators, educators, students, and art enthusiasts, as well as collectors, dealers, and auction houses. It provides a public benefit to a charitable class and falls well within the definition of charitable activity. In sum, this view asks: are fakes a problem that undermines scholarship and the art market? The answer has to be "yes," of course. However, it is not a problem that artist-endowed foundations should spend charitable dollars to solve by providing an authentication service absent production of a catalogue raisonné.

Second consideration: foundations and liability. We now understand that litigation is a likely by-product for authentication programs of artist-endowed foundations whose artists have strong markets. Certainly, this is not a concern of all artist-endowed foundations, since most are not associated with artists that have a strong market. But for the purposes of this discussion, we are talking about those that *do* have a strong market. So it is reasonable to assume that there is a likely risk for litigation. Fiduciaries of charitable organizations are required to exercise care in conducting a foundation's affairs. This means avoiding unreasonable risk, protecting the foundation's assets, and ensuring that the foundation remains able to fulfill its charitable purpose.

Foundations would be ill advised to authenticate without liability insurance coverage for that purpose. Litigation targets a foundation as well as its board members and its officers. The foundation must be in a position to defend itself and to indemnify its directors and officers, and if the judgment falls against it, to make the required payments. With one or more claims, whether or not successful, a foundation's insurance costs likely will rise, eventually to what is an unaffordable level. Without coverage for this activity, if a foundation continues to authenticate, it is self-insuring. This means it will be using its own funds to pay legal costs to defend itself and indemnify its board members and officers, and, potentially, to fund the settlement of a judgment. Perhaps it is not surprising that a growing number of foundations are making the decision to cease authentication activities on a confidential, case-by-case basis.

In conclusion, here are three hypothetical questions: Question number one: If someone were to ask you, "what vehicle should be set up to ensure the integrity of an artist's oeuvre and market by authenticating artworks?" would your answer be: "let's use a legal form whose board is constrained by a fiduciary duty of care; let's have that entity own millions of dollars of art assets committed to public benefit; let's have it undertake an activity that is likely to attract litigation; and let's do all of that in an environment in which the insurance industry is growing increasingly savvy and disinclined to support this activity, except with very costly premiums"?

> " We now understand that litigation is a likely by-product for authentication programs of artist-endowed foundations whose artists have strong markets."

Hypothetical question number two: What might be the characteristics of a more prudent entity to conduct authentication activities in this complex environment? I offer these: the entity would have access to artworks but would not own millions of dollars of art assets committed to public benefit. The entity would have access to the artist's archives and records, but would not own them. The entity would have access to knowledgeable family members and insiders who hold important bodies of knowledge about the artist's work, but it would not be governed by them. The entity would be guided by disinterested, qualified scholars.

Final Question: What would be the role of an artist-endowed foundation in this picture? Answer: The role of an artist-endowed foundation would be to make its assets — the artist's archive and records, the artist's artworks, and knowledgeable family members and insiders — available as scholarly resources to support independent authentication activities.

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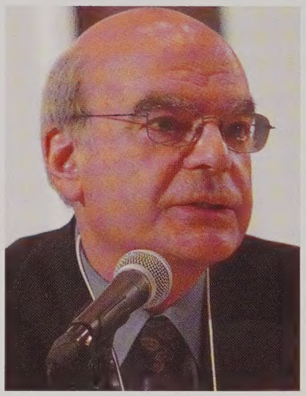
DEFENDING AN ARTIST'S LEGACY— THE DEDALUS FOUNDATION

JACK FLAM*



In response to the title of our session, I would like to say that authentication "after Warhol" should be exactly the same as authentication before the Warhol Authentication Board was disbanded.

The Warhol Authentication Board was working with a very particular set of circumstances, in that the controversies around defining exactly what an "authentic" Warhol is go beyond issues raised by connoisseurship, or most other traditional ways of determining authorship. Instead, Warhol's work raises quasi-philosophical questions about the very concept of authorship, since for Warhol, authorship did not necessarily mean that he had ever even physically touched the work in question. This is very different from the way we evaluate the works of artists with a more hands-on approach, from Renaissance painters such as Masaccio or Leonardo da Vinci to abstract-expressionists such as Robert Motherwell, Jackson Pollock, or Willem de Kooning.

Because of these particularities of Warhol's work, the Warhol Authentication Board was put in the absurd situation of having to make statements asserting that a work was *not* the work of Andy Warhol, even though it was signed, dated, and even dedicated by him to someone. As we all know, the conceptually heated, difficult to resolve — and very expensive — debates about the authorship of Warhol's work became so prominent in the press that it spilled over onto what everybody else was doing. And even though it was so different from what everyone else was doing, it became the center of attention, and cast unwarranted shadows on the procedures of other catalogue raisonné projects — which I think has had an unfortunate effect on the field as a whole.

For more traditional artists — that is, for artists who always create their art with their own hands — these quasi-philosophical issues are simply not germane. Virtually all other catalogues raisonnés of twentieth-century artists are not involved in redefining the concept of authorship. Among major twentieth-century artists, only a few, such as Warhol, or Man Ray, or Marcel Duchamp, involve actually redefining authorship in relation to individual works. With almost all of the other major twentieth-century artists, the main concern is whether or not the artist in question actually made it.

Robert Storr's remarks about various kinds of conceptual art made it clear to me that most of the

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art that I have been most passionately involved with is what could be called non-workshop art; that is, art between the Romantic period and Abstract Expressionism, art that people made with their own two hands. So, a lot of the issues that I want to address are related to that kind of art — most especially, Abstract-Expressionist art. This is so not only because I am the president of the Dedalus Foundation, which was founded by Robert Motherwell, but because I am also a co-author of the catalogue raisonné of Motherwell's paintings and collages.

I want to focus on three issues: the importance of giving opinions; the risks of giving opinions; and the importance of being able to change one's mind.

OPINIONS

With regard to the first issue, I believe that the inclusion or exclusion of a work from the complete catalogue of an artist's works is one of the most important decisions that can be made regarding the legacy of the artist. The inclusion of an inauthentic work, or the conscious exclusion of a genuine one, would distort the artist's oeuvre, and give a false idea of both the history and the significance of the artist's achievement. Therefore, the gravest duty of any author of a catalogue raisonné, or of any foundation that sponsors a catalogue raisonné, is to ensure the integrity of the artist's work.

A catalogue raisonné is a long-term endeavor, devoted to scholarship; the decisions of the authors are often not published until ten or more years after they are made. This stands in glaring contrast to the needs of the market, which needs quick opinions. But all scholars know that there is really no way to ignore the market — chiefly because the market won't ignore us. It has been said that, ideally, catalogue raisonné committees shouldn't have to offer opinions about individual works until the publication of the book. But those of us who have worked in the trenches on catalogues raisonnés know that when a collector submits a work to you, he or she wants to know what you think of it. And in fact, if you think that the work isn't real, I believe that you have to say so; not only in order to make it clear that the work will be excluded, but also to prevent even more fakes appearing — since silence becomes a form of tacit assent.

> "... the gravest duty of any author of a catalogue raisonné, or of any foundation that sponsors a catalogue raisonné, is to ensure the integrity of the artist's work."

For the person who submits a previously unknown work, a positive answer means that the work is worth money; often a lot of money. For the catalogue raisonné authors, if the unknown work is right, the gain is greater knowledge about the artist. There is no financial benefit. (With artist-endowed foundations, some have tried to argue that if the foundation owns and sells work by the artist, it may try to control the market by denying the authenticity of works owned by others. But that is a very spurious argument. It's absurd to think that having one or two more works on the market is going to affect the value of works owned by the foundation.)

If the work is a forgery, I believe that the catalogue raisonné authors have an obligation to say so, once again, in order to protect the integrity of the artist's work, not only in relation to a single painting that may be wrong, but potentially in relation to other fakes — since coming out and saying a work is wrong helps to fend off the proliferation of fakes. Most of the people in this room know that from their own experience. Anyone who is writing a catalogue raisonné is involved in getting the historical record straight, and fakes distort the historical record. You can't write a proper history of modern art if you allow forgeries to be mixed in with the real works. For example, after we began to analyze our research for the Motherwell catalogue raisonné, we realized that the style of the fake *Spanish Elegy* painting that the Dedalus Foundation was recently involved with was completely anachronistic. If a painting like that had been accepted as real, it would have grossly distorted the history of the development of one of Motherwell's most important series of works.

RISKS

Unfortunately, giving opinions involves a certain amount of risk. In the United States, being able to offer an honest opinion is complicated by a conflict between property rights and moral rights. Up until now, the claim of property rights — that is, the threat of defamation of property and so forth — has had a muffling effect on the expression of opinions about works that scholars believe to be forgeries.

> “All scholars know that there is really no way to ignore the market — chiefly because the market won’t ignore us.”

This state of affairs goes back to the case in the 1920s where Joseph Duveen was sued for saying that a painting said to be by Leonardo da Vinci, which was owned by Mrs. Andrée Hahn, was not a genuine Leonardo but a copy. As it turned out, Duveen was right: Andrée Hahn’s painting was not a Leonardo. But after an eight-year legal battle that resulted in a hung jury, Duveen decided to cut his losses and pay Mrs. Hahn the then considerable sum of $60,000 — around $1.3 million in current dollars — just to be done with the case. Since then, scholars and experts feel very vulnerable about the consequences of the opinions they give, and many refuse to give negative opinions because of this. Ironically, it appears that no one has actually won such a lawsuit; but they can be very expensive to defend against. As a result of this awful precedent, even scholars who are working within a single area of art history — Abstract Expressionism, for example — often feel constrained from sharing information about questionable paintings and suspect sources. This leaves a lot of potential space within which forgers and sellers of forgeries can operate.

In the United States, there is an especially asymmetrical relationship between scholarship and the market. Anyone can say with impunity that a given painting is by a certain artist; and even if they are wrong, their saying so is not actionable. But if a scholar who specializes in that artist’s work says that the painting is not authentic, the specter of a lawsuit for defamation of property arises — even though the scholar is right and is offering his correct opinion gratis, and in the public interest. In England, such statements are protected as “opinions,” and thereby generally exempt from lawsuits. And in England, if there is a lawsuit, as Peter Stern was quoted as saying in the December 2011 issue of *The Art Newspaper*, the loser pays the winner’s legal expenses. Not so here.

Though some American lawyers believe that such opinions, especially opinions expressed in published catalogues raisonnés, are protected as free speech under the First Amendment, there is no real consensus about this. In fact, at a recent Columbia Law School symposium on authentications, the general consensus in the room was: Be cautious about depending on your First Amendment right to get you out of a jam, since in America anyone with enough money can sue anybody for anything at any time.

As I mentioned in my article that was published in the *Wall Street Journal* on December 7, 2011, one corrective solution to this might be a toughening of New York’s anti-SLAPP statute. SLAPP is an acronym for Strategic Lawsuit Against Public Participation. A SLAPP is a lawsuit that is intended “to censor, intimidate, and silence critics by burdening them with the cost of a legal defense until they abandon their criticism or opposition.” New York Supreme Court Justice J. Nicholas Colabella has summed up the effect of a SLAPP lawsuit in an appropriately grim way: “Short of a gun to the head, a greater threat to First Amendment expression can scarcely be imagined.”

> “If you think that the work isn’t real, I believe that you have to say so . . . silence becomes a form of tacit assent.”

At present, California seems to have the strongest anti-SLAPP statute. It provides for a special motion to strike a complaint where the complaint arises from activity exercising the rights of petition and free speech. The law allows a judge to decide at the outset of the suit whether the SLAPP has a “probability”

FIGURE 1. Fake Motherwell "Spanish Elegy" painting that figured in a recent lawsuit. Photo: Courtesy, Dedalus Foundation, Inc.

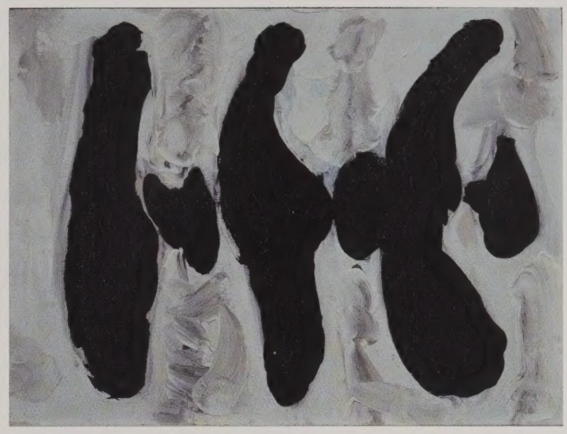

FIGURE 2. ROBERT MOTHERWELL (American, 1915-1991). *Spanish Elegy (Alcaraz) XV*, 1953. Oil on canvas. Photo: Courtesy, Dedalus Foundation. All Rights Reserved/Licensed by VAGA.

of winning. If the judge finds that it does not, the SLAPP must be dismissed, and the SLAPP target is awarded legal defense costs and attorneys' fees. In any case, lobbying for some kind of legislation to protect scholarly opinion would greatly benefit not only scholars and foundations, but also the multi-billion dollar art market in New York.

CHANGING OPINIONS— THE RECENT LAWSUIT

Finally, I want to say something about a catalogue raisonné project changing its mind about a work. As most of you know, the Motherwell catalogue raisonné project was recently involved in such a situation, which got us caught up in a lawsuit. Contrary to what some people have said and written, this was the only instance in which we have had a problem with an opinion we have given. I think that is a pretty good record, considering that we have more than 2,800 works in the Motherwell catalogue raisonné.

Here again, with regard to changes of opinion, I don't think that the Warhol Authentication Board situation was at all typical, since some of their changes in opinion had to do with changes in the concept of what constitutes a genuine work by Andy Warhol. When you are dealing with an artist such as Motherwell, the issue is more straightforward: Did he actually make this work, or was it done by someone else? We are talking about the execution of a work in a much more direct way.

> "I don't think that the Warhol Authentication Board situation was at all typical, since some of their changes in opinion had to do with changes in the concept of what constitutes a genuine work by Andy Warhol."

Doing a catalogue raisonné is a constantly evolving process. In a way it is like scientific research. New information leads to new ideas, and sometimes it compels you to reevaluate what you thought you knew. So if you realize that you were misled about the provenance or the style of a work, you obviously have an obligation to say so. For example, when we first saw the work called "Spanish Elegy" **(FIG. 1)** in January 2007, we were misled about its provenance and by its similarity to other works that we knew of that came from seemingly reliable sources. At the time, we were still gathering information rather than synthesizing it. That is another important aspect of a catalogue raisonné project; it is an ongoing process

> "In the long run, it is to everyone's advantage to let the truth circulate freely. Those of us who can unite to make it possible to do so, should unite and should do so."

that has different phases. Not all the information is available to you at the same time. When we first saw this picture, for example, we knew that there were very few paintings by Motherwell that were supposed to have been done in 1953, and so we welcomed seeing a painting like this. We thought we were being shown an aspect of Motherwell's work that we didn't know about at the time.

But by the end of that same year, 2007, we had moved past the information gathering phase and were engaged in synthesizing the material we had gathered about Motherwell's art; certain information led us to realize that this painting was probably wrong. We then spent roughly two years delving deep into Motherwell's production at this time. We had many of his unquestionably real works from the period scientifically analyzed to provide a technical baseline of his practice. We also had a clearer idea of what his 1953 production was really like, as exemplified by works such as *Spanish Elegy (Alcaraz) XV* **(FIG. 2)**. And here I want to emphasize that the knowledge we had acquired *in the course of creating the catalogue raisonné* was invaluable. That knowledge provided the information that led us to have strong doubts about paintings that only ten months earlier had not seemed so clearly anomalous.

The creation of a catalogue raisonné is not a static process. As you proceed with it, you gain a knowledge about the artist's work that is not only fuller and more complex than what other people know, but also fuller and more complex than what you yourself knew at earlier stages along the way.

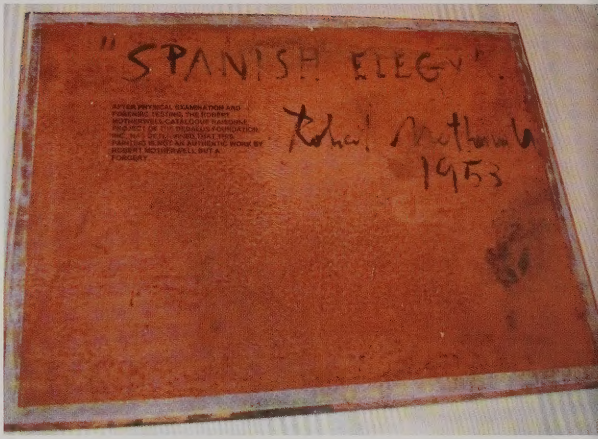

FIGURE 3. Verso of the purported Motherwell "Spanish Elegy" (FIG. 1) showing the stamp upper left branding the painting a fake.

With regard to the "Spanish Elegy" painting I just mentioned, in 2009 we withdrew our previous opinion letter and asked to see the work again. It was then clear to us visually that it was not right. Scientific testing reinforced and validated our opinion. When we formed our new opinion, we knew that stating it publicly might involve us in litigation. But my board and I decided to stand on principle and challenge the authenticity of this picture. As a result, we did become involved in a lawsuit.

Eventually, we were vindicated. Not only were we reimbursed for our legal expenses, but we were also allowed eventually to stamp the painting as a fake **(FIG. 3)**.

This brings me back to where I started. Without courage, honesty, and open communication between scholars, foundations, collectors, and dealers, fakes and frauds will continue to proliferate, distorting art history and polluting the market. In the long run, it is to everyone's advantage to let the truth circulate freely. Those of us who can unite to make it possible to do so, should unite and should do so.

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THE ROY LICHTENSTEIN FOUNDATION

JACK COWART*

My remarks are, perhaps, grouchy or fatigued, prosaic or frustrated, since, when dealing with authentication, "no good deed goes unpunished." This is especially true regarding artists whose works command high market value. The issue of authentication is a serious matter and touches on academic, ethical, cultural, and legal concerns, as well as on brand and copyright, money and authority. I will discuss the issue from the perspective of an artist's foundation.

When the Lichtenstein Foundation was established in 1999, we had no collection. Even now, our collection is small. From 1999 to 2004, we operated informally, much as Roy did in his studio days. But in 2005, the Roy Lichtenstein Foundation felt a peer group obligation to create an elaborate and rather anxious formal authentication committee. We patterned the committee and procedures — and this may have been a mistake — after the dominant Andy Warhol Foundation, with processes, checks and balances, legal warranties, and releases. Presuming to learn from the prior problems at the Warhol Foundation, we at the Roy Lichtenstein Foundation took on the risks associated with a transparent process, by giving evaluative reasons as to why the committee did or did not view a work as authentic. We also outlined our procedures and wrote an appended letter summarizing our "due diligence." Moreover, we tried to open a professional and responsive conversation with the applicant. I took the lead in persuading our legal counsel and board to create such a formal but open procedure. I hoped it would meet some perceived need in the art world, reasoning, "If not us, who?" — since we at the Foundation know so much about Lichtenstein's works. We also harbored the naïve notion that we needed to protect Roy Lichtenstein's reputation and oeuvre from distortion. After all, the Foundation was chartered to do a catalogue raisonné; it seemed logical to solicit owners who thought they had a Lichtenstein to bring their works to the Foundation. If someone actually had an undocumented but persuasive Lichtenstein, we at the Foundation would certainly want to know about it.

> "By 2011, we came to the opinion that the risks involved in authenticating Lichtenstein's works outweighed any possible reward or lasting effect."

Yet, in the six years that followed, this was rarely, if ever, the case. Most of the works submitted — they were almost all drawings — were obvious and insubstantial copies after known and published Lichtenstein works, most with fantastical non-provenances. The owners themselves were only interested in having their works tested and put onto the market, onto Internet auctions, or used as collateral. More than once, the owners of these rejected drawings offered them to dealers or minor collectors looking for a bargain, *without* passing on the de-authentication paperwork from the Lichtenstein Foundation, of course! Furthermore, because we didn't mark or seize de-attributed works, they just kept circulating and frustrating the process.

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* Dr. Jack Cowart, Executive Director of the Roy Lichtenstein Foundation (1999 to present), was previously Deputy Director and Chief Curator of the Corcoran Gallery of Art (1992-1999) and Head of the Department of 20th Century Art at the National Gallery of Art, Washington (1983-1992). Prior to that, he held museum curatorial posts in St. Louis and Hartford. Dr. Cowart is a widely published and recognized authority on Roy Lichtenstein and Henri Matisse, as well as on other American and European 20th century modern and contemporary art and artists.

"The Lichtenstein Foundation cannot, should not, and does not have to fight battles on his or his market's behalf."

By 2011, we came to the opinion that the risks involved in authenticating Lichtenstein's works outweighed any possible reward or lasting effect. I can appreciate the irony that, in June of that year, the Lichtenstein Foundation's Executive Committee and I reversed field and asked our Board of Directors to disband the authentication committee. We had reviewed our charter, more selfishly and skeptically, and nowhere did it say, "Do authentications." In fact, as we know from Christine Vincent, some believe that authentication is not a charitable purpose. The charter also did not mandate that we jeopardize our purposes in service to the market and expose our foundation staff and consultants to litigation, distraction and risk. Nor did our charter say, "Buy expensive insurance, which may or may not actually cover expenses of nuisance suits, or protect the experts rendering opinions, or compensate the staff for losing years of productivity on their actual and multiple charter purposes." And, ultimately, nowhere did it say, "Compensate for the general lack of expertise, interest, or attention on the part of curators, scholars, museums, university galleries, auction houses, or independent research entities," all of which and whom seem to be more interested in art and global cultural theory than in encouraging teaching or developing hands-on connoisseurship or expertise, or about what really makes a work of art, especially by Roy Lichtenstein.

Thus, in our relative youth as a foundation in 2005, we allowed ourselves to get sucked into creating an elaborate authentication system based on a Warholian methodology. In the process, and in retrospect, we inverted the Lichtenstein Foundation's rational process and mission. We confused an overarching, contemplative catalogue raisonné with the forced march of a time-critical authentication service.

Lichtenstein was not Warhol. He did not work like Warhol. He did not think like Warhol. Andy Warhol did everything within his power and sway to find ways to confuse, share, and obscure authorship and definitions of what was art, and what was his art, and its cultural influence and impact. In a more classical, conservative, and legible way, Roy Lichtenstein was closely involved in a limited studio production, which was done by hand, under his control, with documentation and consistent representation, observation, and engagement. Furthermore, enough years had passed since Roy's death in 1997 that we could see, and can trust, that his legitimate art can stand on its own two legs. The Lichtenstein Foundation cannot, should not, and does not have to fight battles on his or his market's behalf. I suspect it was our sentimental zeal that made us try to protect an artist who really didn't need protecting. Our judgment may also have been skewed by the Warhol phenomenon and the Warhol Foundation's admirable, yet now almost fatal, precedent.

Not only did we decide it would be more fun, but also a better "return on investment" for the public benefit for us to stick to our primary tasks. One of those is "to facilitate public access to the art of Roy Lichtenstein and the art and artists of his time." The Foundation also took on another long-term project in 2008, when we acquired the distressed photo estate of Harry Shunk containing 200,000 uncatalogued and largely unpublished photographic Shunk-Kender and Shunk Archive items documenting 450 modern and contemporary artists, exhibitions, studios, performances from 1960 in Europe and America up to the 1990s. We have taken on the challenge to research and catalogue the collection; to electronically share all of this information; and to find ways to give all of these objects to expert study centers and museums in Europe and North America.

I realize that the current emergence of rich, dead artists' endowed foundations has created a convenient assumption that we should be obliged to paint ourselves into an authentication corner, or to allow others to paint us into such a corner, as we are anesthetized by notions of duty, guilt, honor, ego, worry, or outrage. We have let those others, who have been quick to absolve themselves of exposure and responsibility on their side, to shift this burden onto the foundations. The foundations, in their good-natured manner, took the hot potato and retained some fear of the consequences of disorder or distortion with or without a catalogue raisonné.

The Lichtenstein Foundation, family, estate, and our related colleagues, and board, in the spirit of *this* particular artist, Roy Lichtenstein, know and vouch for the over 5,200 works listed in our database, built up by Roy and others for more than 50 years, and now available on the Lichtenstein Foundation's website. These works are securely documented, and they give quite enough visual information about the sources, references, styles, and history of Roy Lichtenstein's creative history and output from 1940 to 1997. Lichtenstein works outside this persuasive 99.9% core may exist. If they do, we hope their owners will someday bring them to our attention and let us a look. We may or may not respond. If the owners do not want to show them to us, that's the way it is. We need to move on.

> "Works outside this persuasive 99.9% core may exist. If they do, we hope their owners will someday bring them to our attention and let us look. We may or may not respond. . . . We do wish the world were a different place. But until it changes, we respectfully opt out."

The Lichtenstein Foundation has decided to focus on and personally study all those works with explicit studio, archival, photographic, and gallery documentation and with convincing provenance. We will lead a close technical analysis of what makes a Lichtenstein in our minds and eyes, in our experience, and in physical execution. Our online catalogue raisonné will be fluid and responsive, but with no preemptive, chilling worry about documenting every single Lichtenstein, which may or may not be somewhere in the world, by some arbitrary deadline. That is beyond our artist's personal interests and our current notion of necessity. We do wish the world were a different place. But until it changes, we respectfully opt out.

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CONT. ➔

THE LEGAL PERSPECTIVE

PETER R. STERN*

As a lawyer, I have been involved in authenticity cases for more than thirty years. During that time period, I have dealt with disputes concerning works ascribed to many artists, including Archipenko, Benton, Brancusi, Cassatt, de Kooning, Diebenkorn, Gauguin, Hine, Kensett, La Farge, Lachaise, Modigliani, Picabia, Reynolds, Riopelle, Schwitters, and Warhol. I am basically an equal opportunity attorney; I have defended experts and I have contested with them — but always on the right side!

I am also fully familiar with the elephant in the room, as I counseled and worked with Joe Simon-Whelan from the time he initially sought to sell his Warhol self-portrait, through the two denials of its authenticity by the Warhol Authentication Board, until the day Mr. Simon chose to file his lawsuit against the Andy Warhol Foundation, at which point I declined to pursue the case.[1] I have also been consulted on a number of other Warhol cases, all of which I have turned down, including one that was recently decided called *Thompson v. The Andy Warhol Foundation*.[2] That case involved a photographer who found a drawing at Tepper Galleries for seventy-eight dollars and decided it was a Warhol! The Warhol Foundation disagreed, actively fought the case, and the complaint was ultimately dismissed by the court.

As other panelists have noted, Warhol is unique when it comes to authentications and authentication decisions. This is reflected in the fact that there seem to be as many Warhol authentication lawsuits as there are lawsuits concerning works by other artists combined. Warhol was prolific, and he stretched the boundaries of what an artwork is. Given that his works are also valuable, they are highly faked.

It seems as if there has been a vast increase in litigation concerning authenticity in the past few years, but I am not sure that this is true. It may simply be that the amount of money involved has become so substantial that the press is giving much more attention to the subject, with the unfortunate outcome that art scholarship has been fighting a losing battle against commerce. On the other hand, as the prices of works of art have escalated exponentially, there is potentially much more about which to litigate. In any case, as art prices skyrocket, the exposure for people involved in authentications and authentication boards has become of much greater concern.

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*Peter R. Stern is Counsel to McLaughlin & Stern, LLP, where he heads its art practice. During the past 30 years, Mr. Stern has provided general counseling to, and representation of, numerous galleries and dealers, artists and artists' estates, collectors and catalogue raisonné committees, as well as auction houses and insurance companies. He is also a member of IFAR's Law Advisory Council.

[1] *Simon-Whelan v. The Andy Warhol Found. for the Visual Arts, Inc.*, No. 07 Civ. 6423(LTS), 2009 U.S. Dist. LEXIS 44242 (S.D.N.Y. May 26, 2009).

[2] *Thompson v. The Andy Warhol Foundation for the Visual Arts, Inc.* 2011 N.Y. Slip Op. 52046(U).

Speaking as a lawyer, the risks to an expert are loss of time, legal expenses and emotional aggravation, rather than actually losing on the merits. For I am not aware of any instance in which an authentication board or, more importantly, a catalogue raisonné committee, has lost a case. What they have lost is a great deal of money and time, which had to be diverted from more productive activities.

The good news is that there are important ways to minimize the risks, which some of the more sophisticated organizations follow. Below, I outline four of them:

- First, it is essential that those involved in the process of authentication be incorporated. One of the first authentication cases in which I was involved serves as a case in point. It involved James Yarnall, a professor who was writing the John La Farge catalogue raisonné and who was not incorporated.[3] Yarnall became involved in a lawsuit that could have bankrupted him; we eventually won the case, but at the cost of a lot of time and effort.

- Second, the authenticating organization must adopt and rigorously follow protocols regarding how it considers questions of authenticity. One rule should be: never to render an opinion unless specifically asked to do so. For example, one should not, unasked, tell an auction house that it is selling something that you think is a fake. A second rule is to insist on being given all relevant and material information.

- Third, all authenticating organizations should have submission forms. The forms should state that the person submitting the work will live with whatever opinion is rendered; that the applicant will not sue if he/she is unhappy with the decision, and if he does sue, he will pay the attorneys' fees. Submission forms, when used regularly, have an *in terrorem* effect in preventing people from bringing a lawsuit. I say that from experience because all of the cases that I have turned down have involved submission agreements; I will not go against them. That is the main reason why I would not litigate the Simon-Whelan case against the Andy Warhol Foundation, despite the fact that I believe his painting is in fact by Warhol and despite my views that the Authentication Board acted improperly.

  The most recent example, and one which Jack Flam discussed and has given me permission to mention, is the recent case involving the Dedalus Foundation, which was filed by Killala Fine Art.[4] In this instance, ironically, the Dedalus Foundation failed to have the applicant fill out the submission form. If that form had been submitted, I do not believe that any reputable lawyer would have taken the case. The final outcome was a correct one, but this example helps drive home the point: it is important to have a submission form.

- Fourth, the organization should seek out and secure proper liability insurance; it is obtainable. There are companies that provide Directors and Officers liability insurance, as well as Errors and Omissions insurance. And while the prices for these policies will probably go up — particularly after the recent Warhol decisions — it would be foolhardy to be involved in authentications or in preparing a catalogue raisonné without having such insurance.

Following these recommended guidelines will serve authenticating organizations and catalogue raisonné authors in good stead.

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[3] *McNally v. Yarnall*, 764 F. Supp. 853, 855 (S.D.N.Y. 1991).

[4] *Killala Fine Art, Ltd. v. Weissman*, No. 11- 0702 (S.D.N.Y. Filed Feb. 1, 2011).

IMPACT ON THE MARKETPLACE

DAVID NASH*

Perhaps the reason I am the last speaker is that my discussion descends from the theory of originality so brilliantly addressed by Rob Storr, to the price of originals. More specifically, I am here to address the consequences to the market of the Warhol Foundation's decision to stop authenticating. I have thought about this a lot, and I don't believe it is going to make a great deal of difference.

It is very important to put this into perspective. We have talked about fakes, and about issues of authenticity, but if you compare the number of, let us say, original Andy Warhol paintings that have been sold in the last twelve months, which is approximately two hundred works, to the number of dubious or fake works by Warhol, the percentage of fakes is small. Leslie Prouty, the chief contemporary art expert at Sotheby's, has said that she doesn't see more than a handful of works submitted each year for sale that she thinks are either fake or require authentication. This is a pretty high proportion of originals to questionable pictures. For some of the other artists we have talked about, the ratio of original to fake would be even higher. Of the one hundred or so works by Lichtenstein that change hands every year, I doubt that there are one or two which have raised any question about authenticity.

"Certificates of authenticity are a great help to the market, and the Warhol Foundation's decision will be a massive inconvenience to everybody, but not a market changer."

The market does find a way of leveling itself; a very good example is *Sixteen Jackies*, the "Warhol" work referred to by Rob Storr. The market was not excited by the idea of reuniting sixteen individual Warhol paintings, and the seller got back exactly what he should have gotten back for sixteen individual pictures. The market does have ways of dealing with issues of authenticity and originality, which are not dependent on catalogues raisonnés or on certificates of authenticity. The estate of Willem de Kooning is a good example. The estate does not and will not issue certificates of authenticity, and it never has, but the market manages to cope with this lack of information and distinguish good works from bad in a very effective and efficient way. I admit that certificates of authenticity are a great help to the market, and the Warhol Foundation's decision will be a massive inconvenience to everybody, but not a market changer.

Another good example of a well-ordered market is that of Alexander Calder. The Calder Foundation does give authentications — actually they call them examinations, not authentications — but they will indicate whether a given work will be included in the catalogue raisonné. This has done a lot to discourage people from making a little Calder mobile on the side. I fear that the recent decision of the Warhol Foundation is going to encourage people to look in their drawers and suddenly find a Warhol that they did not know was there. This will be an inconvenience, but not be a reason for the market to collapse.

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*David Nash, along with his wife Lucy Mitchell-Innes, is the owner of Mitchell-Innes & Nash, an art gallery in New York with locations on Madison Avenue and in Chelsea. In a prior 35-year career at Sotheby's, Mr. Nash rose to Executive Vice President and was a member of the Board of Directors. He was in charge of all Fine Arts departments in Sotheby's New York and was then appointed Director of the International Impressionist and Modern Art Department. Mr. Nash is also a member of IFAR's Board of Directors.

The market for many of the artists discussed at this program is very big business, Warhol in particular. But there are many artists who command high prices for whom the information remains vague — Arshile Gorky is an example, Franz Kline another. There is nobody to defend the authenticity of these artists' works, and very little in the way of archives or records. Nevertheless, the market functions well. The prices for genuine Gorkys are extraordinary, and the same is true for Franz Kline.

In conclusion, while I regret that the Warhol Foundation made the decision it has, because it will be an inconvenience, I can well understand why it has made it, and I do not think that it will have very much of an impact on the market for Andy Warhol's works.

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CONT. →

IFAR ART AUTHENTICATION RESEARCH SERVICE

For more than forty years, IFAR has offered a unique Art Authentication Research Service, which works to resolve questions concerning the attribution of works of art. As a not-for-profit organization with a distinguished Art Advisory Council and a worldwide network of scholars, IFAR is free to render objective opinions unaffected by the marketplace.

IFAR offers its services to individuals, dealers, museums, and other institutions. We examine art only for the owner, or with the owner's consent. We are only able to accept a limited number of projects each year. As an educational organization, IFAR reserves the right to publish the results of its research.

For additional information, please call (212) 391-6234
or go to www.ifar.org.

WARHOL BOARD STOPS AUTHENTICATING: ISSUES AND FALLOUT

Q & A

Q If you own a Warhol that is not included in the catalogue raisonné, which so far only covers work up to 1974, and you want to know whether it is authentic or not, will the Warhol Foundation tell you whether it will be included in the catalogue raisonné?

A SHARON FLESCHER (SF): I sent an email to Joel Wachs, President of the Warhol Foundation, asking essentially that question. It was worded as follows: ". . . Will the Committee tell owners whether their works will or will not be included or are expected to be included or not included in the catalogue raisonné, or will the process require that they wait until the actual publication?" Answer: "They haven't been told in the past, and they will not be told in the future."

Q What *will* they actually tell you?

A DAVID NASH (DN): Well, we've learned that they won't tell you anything and they never did.

SF: The owner has to wait until the publication is out to see whether the work is included and what is said about it. This could be a long wait. The catalogue raisonné may take another twelve to twenty years to complete. The volumes on paintings will be finished long before then, but Warhol was a prolific artist, and the catalogue includes ephemera and photographs as well.

Q Will there be a supplement to the already published catalogue for pre-1974 works?

A SF: Yes, I was told that there will be a supplement, but only after all the remaining publications come out.

Q Two quick questions. Are there any examples of submission agreements with a requirement for an indemnity to be paid by the person submitting the work for authentication? And the second, what do you do in a case where the committee, or whoever is authenticating the work or compiling the catalogue raisonné, is divided or not sure that the work is legitimate or a fake?

A PETER STERN (PS): An indemnity is part of the submission form. I would roll an indemnity clause in with reimbursing the board or the committee for their fees.

Q Have any authentication boards actually gotten that money back when an award indicated they should?

A PS: I am not aware of an instance where a board has recovered their fees, but in the Simon-Whelan case, that possibility was the main reason the case was settled. Joe Simon and his counsel were faced with the possibility of an award against them of seven million dollars in attorney's fees. But most cases do get settled. The major point is that having that language in the form forestalls ninety-nine cases for every one that goes forward. That's a big reduction of risk.

JACK FLAM (JF): A standard practice is that three answers are given potentially to a submission: 1) the work will be included; 2) the work will not be included; and 3) we are uncertain at present whether or not the work will be included. Obviously, as you get closer to publication day, that third response is less comforting to the person who is submitting. That is standard procedure and probably every well run catalogue raisonné project has something similar.

Q I have a question for Jack Cowart and for Peter Stern. Jack, you said that you have gone out of the business of authentication. What do you do when Sotheby's or Christie's calls you and says, "We have a work we might be offering, we would like you to look at it and give us your opinion"? Do you go look at it, and if you do, and

JACK COWART = JC
JACK FLAM = JF
SHARON FLESCHER = SF
DAVID NASH = DN
PETER R. STERN = PS
ROBERT STORR = RS
CHRISTINE VINCENT = CV

you don't think it is right, what do you say? And Peter, you said that your words of wisdom to clients include: "don't offer an opinion," but what do you say to your clients who tell you, "Sotheby's or Christie's has asked us to look at a work; we have seen it, and we are not so sure that it's right; can we say something or not?"

A JACK COWART (JC): We appreciate the surrealism of the moment. If not us, then who, when and how? Our legal counsel and we have been rehearsing how to answer that question should it come to us. In our letters to the auction houses, we offered a list of suggested contacts for the applicant or the person asking the question. In this case, we believe Christie's and Sotheby's are experts themselves, and since we haven't had the question, we haven't gone there yet. At this moment, we are not responding. We are simply sending a contact list and saying, "talk amongst yourselves."

I might add that we would also invite everyone who has a question about a Lichtenstein painting to bring it to Roy's studio, and the estate staff — not the foundation staff — will, within reason, bring out a selection of like-works and allow the person with the question to more or less self-educate as to how that work stacks up against known work from the artist's studio. This is an estate procedure; the estate has a corpus of some complexity, where almost everything has some related issue.

PS: To answer the other part of the question, the advice I always give the entity is that, if they are willing to give an opinion, they should say to the auction house or the dealer: submit the work; fill out our form; provide us with the provenance history; provide us with all the information you have; let us know if there are any conflicting opinions; the whole procedure — and not just go in, look at the work, and say on visual inspection that it is right or it is wrong.

ROBERT STORR (RS): I would like to pull the covers to the side of the bed of the public, because, again, we are talking mostly about ownership and expertise connected to commercial values. But the artist's work exists in the public domain whether or not the objects are in public possession, and distorting the understanding of what Warhol did and why he did it is a serious matter of public interest, I think. The fact that Warhol pushed it so far is one of the reasons that his work is so interesting and one of the reasons he survives as an artist, but one really needs to look at this and talk about this much more openly than we have so far and focus less on Joe Simon or any other person who happens to own a dubious or non-dubious single item.

"But the artist's work exists in the public domain whether or not the objects are in public possession, and distorting the understanding of what Warhol did and why he did it is a serious matter of public interest, I think."

Let me introduce another version of the same set of issues but a different circumstance. There are catalogues of works that don't quite count as catalogues raisonnés. Gerhard Richter has, since his Paris/Bonn exhibition of 1993, published a catalogue raisonné of his work that basically consists of catalogue numbers and thumbnail images. Since 1993, a series of catalogues for gallery exhibitions had added to this document using the same format. People who know Richter's work know that this is a highly problematic but very interesting artifact. The first work in that catalogue raisonné is called *Tisch*; it is a partially overpainted picture of a table based on an image taken from *Domus* magazine. However, it is actually *not* the first work in his oeuvre chronologically speaking. Rather it has been given pride of place as the first definitive statement of ideas developed in previous paintings that appear later in the catalogue. Moreover, the subsequent entries are also shuffled a good deal — for very good reasons. I am a great admirer of Richter and I think this is one of the brilliant things that he has done, but to treat this as a scholarly catalogue raisonné is a big mistake, when in fact it is an exercise in self-evaluation and self-editing.

For example, one series of entries consists of paintings of toilet paper rolls on the wall. Two images are reproduced; all together there are four paintings. In the case of the second, third and fourth, only the second is reproduced. I am reasonably certain that some works in the catalogue no longer exist because he has painted over them. There are also works that have shown up in auction houses in Germany, which are nowhere in the catalogue raisonné. Also, there is a very important body of work having to do with the forty-eight portraits Richter showed at the Venice Biennale in 1972, of which only a few odd bits appear in the catalogue raisonné. A scumbled portrait of Freud, which is in a New York collection, is in the catalogue raisonné; however, a portrait of the French writer Henry de Montherlant that is now in the collection of the Museum of Modern Art does not appear. Neither does a portrait of Mao recently sold at Griesbach in Berlin. The only Mao that exists in the Richter oeuvre so-to-speak is a multiple, an unnumbered print published in the 1970s when Maoism was all the rage. He made it as a sardonic response to the vogue for Maoist politics. It was a deliberately disruptive and argumentative work. But there is also this grisaille painting of Mao in a campaign uniform from the Long March to contend with, and why the artist views one favorably and the other not is a matter for serious critical examination, which will not occur if the work has effectively vanished from the public — that is published — record. These are things that actually alter our sense of the dimensions and meaning of Richter's work. I don't really give a damn whether somebody spends half a million dollars or not for a grisaille painting of Mao. I do give a damn that it exists!

SF: That's a first at an IFAR program!
RS: I just think we needed a little spice.

Q Given what Rob Storr said, that there is a moral obligation, a historical interest in defining accurately the oeuvre of these artists, and given that there are now legal obstacles to the representatives of artists' estates or foundations enacting that, what are some of the available options? Christine Vincent mentioned that maybe some sort of independent body could do this. I don't know how it would be protected from liability, but are there real opportunities to figure something out that would work? Related to that, would Mr. Stern address whether or not there are parallels between libel law and some of the liabilities that the foundations have? It seems like it is a free speech issue. Why shouldn't scholars and experts be allowed to say what they think? There is a moral problem and there is a property rights problem, but is it like libel? Doesn't there have to be malice of intent?

My third question is a simple one, and I'm being a provocateur here, but because one of the options is to let the market run its course as Mr. Nash said, what would the market have said about the Joe Simon Warhol Self-Portrait series?

"The percentage of lawsuits is infinitesimal — it is the cost of that one infinitesimal case that is the problem."

A PS: I would like to tackle your question relating to what might be done positively to make it easier to produce catalogues raisonnés. One thought is to have some industry-wide insurance coverage for all properly formed committees or experts, readily available, and affordable, which could be there as the backstop for the one in five hundred cases that will come up. The percentage of lawsuits is infinitesimal — it is the cost of that one infinitesimal case that is the problem. So one way perhaps of addressing it would be to come up with a safety net for all organizations that doesn't involve funding from suspect sources, shall we say.

RS: A chilling effect only needs one serious threat.

NANCY MOWLL MATHEWS: The College Art Association, which already offers some kinds of insurance to its members, is looking into obtaining liability or E&O insurance for authentication. It would be for CAA members, but it is at a reasonable cost and at least it's a start that would be within the realm of possibility for most scholars....

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"Had there been no authentication board, it would have sold for the million and a half dollars or so that it was about to be sold for when it was suggested to Joe Simon that he submit the work to the Warhol Authentication Board."…

"It is worth nothing [now], because there is enough doubt hanging over it."

SF: May I answer the first part of the question and say that IFAR is a nonprofit organization, which has had an Authentication Research Service for forty-two years and has never been sued. I am reluctant to say that for fear that it will be a jinx, but, frankly, I don't think that anyone who would attempt to sue us would stand the faintest chance of winning. I say that so that attorneys in the audience don't get the idea. But we do have insurance, and I am convinced that we got it only because we had a thirty year prior history without a suit. So it *is* possible to get insurance, and while the chances of being sued are very slim, it does happen.

RS: Maybe the punishment for frivolous suits is that they pay your court costs and you get to pick any work you want from their collection.

SF: I like that! Now can someone address the third question? It is an interesting question. What would the marketplace have done with Joe Simon's Warhol "Self-Portrait," which was rejected by the Warhol Authentication Board? In other words, if there were no authentication board and the painting had gone directly to the marketplace, as David Nash is now saying will likely happen in the absence of the Warhol Authentication Board rendering an opinion, would the decision have been the same; namely, that the work was not an authentic Warhol?

PS: The decision would not have been the same, because this painting was unique. Warhol is so unique to begin with, but this painting is unique because it had already been authenticated twice — by Vincent Fremont [then a Trustee of the Warhol Foundation] and by Fred Hughes [Executor of the Warhol Estate and, at the time, Chairman of the Foundation]. Also, the same image is on the cover of Rainer Crone's Warhol catalogue raisonné. Had there been no authentication board, it would have sold for the million and a half dollars or so that it was about to be sold for when it was suggested to Joe Simon that he submit the work to the Warhol Authentication Board.[1]

Q What do you think it is worth now?

A DN: It is worth nothing, because there is enough doubt hanging over it. I can't imagine that anyone would pay anything except a small price for it. It is like an Old Master; people have to make their own decisions.

SF: Do you all agree that it is worth nothing, even though many people believe that the decision by the authentication board was not the best decision?

JF: Whether it was the best decision or not is independent of what it is worth. What David Nash said is very much to the point. It is like an Old Master, where you've got a division of opinion that will probably never be resolved, and in this case, never being resolved goes against the monetary value of the work.

SF: This seems an appropriate moment to end and thank our outstanding speakers. Please join us at the reception where we can continue the discussion.

---

[1] *Simon-Whelan v. The Andy Warhol Foundation for the Visual Arts*, No. 07 CV. 6423 (LTS), 2009 U.S. Dist. LEXIS 44242 (S.D.N.Y. May 26, 2009). See Sharon Flescher and Mary Morabito Rosewater, "Dispute Against the Warhol Authentication Board Allowed to Proceed," *IFAR Journal*, Vol. 11, no. 1, 2009: pp. 36-46.

SCENES FROM AN IFAR EVENING

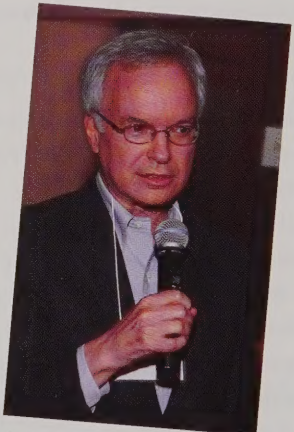
Robert Storr and Michael Brenson.

Amy Schichtel and Charles Stuckey.

Caroline Lowndes.

Cynthia Hazen Polsky and The Honorable Leon B. Polsky, IFAR Board Member.

Jayne Warman, Lucy Dew and Jack Cowart.


John Silberman asking a question.

Frances Beatty.

Left to Right: Tim Clifford, Morgan Spangle and Richard Grant.

Gertrude Stein.

Richard L. Menschel.

The Honorable Barbara Jaffe.

Anthony Williams.

Kate Ganz and Samuel Sachs II, IFAR Board Member.

Lucy Mitchell-Innes and David Nash, IFAR Board Member.

Elaine Rosenberg and Sharon Flescher, IFAR's Executive Director.

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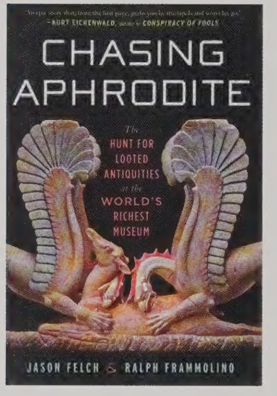
THE FALL AND RISE OF MARION TRUE AND THE GETTY MUSEUM

THOMAS R. KLINE*



CHASING APHRODITE: THE HUNT FOR LOOTED ANTIQUITIES AT THE WORLD'S RICHEST MUSEUM
JASON FELCH AND RALPH FRAMMOLINO

Houghton Mifflin Harcourt, 2011
375 pp., hardcover, $28.
(Also available in paperback)
ISBN 978-0-15-101501-6

COLLECTING ANTIQUITIES

Collecting antiquities, especially magnificent ones, has always been a dodgy business. Initially the prerogative of victorious armies, as the spoils went to the victor (a concept so ancient you can say it in Latin: *ad victor spolia*), the effort was later taken up by moonlighting diplomats, unrestrained by the governments they served. Luigi Palma di Cesnola, for example, who had served simultaneously as the envoy of several countries to the Ottoman rulers of Cyprus,[1] helped The Metropolitan Museum of Art build its antiquities collection with 4,000 objects from Cyprus. (He later became the Metropolitan's first director, holding that position from 1879 to 1904.)[2]

In the 1960s, Clemency Coggins, a professor of archaeology and art history now with Boston University and Harvard's Peabody Museum, raised questions about antiquities collecting in American museums by detailing pervasive and destructive looting of architectural monuments in Central America. She tracked the antiquities that had been quite literally hacked from the jungles of Guatemala and Mexico to the collections of prominent American museums in Cleveland, Houston, Minneapolis, New York, and St. Louis.[3]

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[1] Louis Palma di Cesnola, *Cyprus: Its Ancient Cities, Tombs and Temples* (John Murray 1877; reprinted with foreward by Stuart Swiny, Star Graphics, 1991), Foreword p. 3. Although the truth is difficult to decipher, Cesnola apparently had a firman or permit from the Ottoman rulers to conduct archaeological research on Cyprus (*id.* p. 65), but not necessarily for the export of antiquities he removed from the ten thousand some odd tombs he opened up. (*Id.* Foreword pp. 3, 83.)

[2] The Metropolitan Museum's website describes Cesnola as a "soldier of fortune" who brought home 35,000 objects from Cyprus: accessed April 19, 2012, http://www.metmuseum.org/Collections/search-the-collections/160000146. Looting or smuggling by diplomats of many nations, enabled by abuse of the diplomatic pouch, continues to be a concern worldwide. *See* "Diplomats and Art Smuggling," *The Broker*, accessed April 19, 2012,http://www.thebrokeronline.eu/Articles/Safe-havens/Diplomats-and-art-smuggling.

[3] Clemency Coggins, "Illicit Traffic of Pre-Columbian Antiquities," 29 *Art Journal* (1969) p. 94.

Archaeologists like Coggins have long been alarmed over the destruction of the historical record caused by looting. The problem, however, is that stripping objects of their historic context still leaves them with aesthetic and monetary value if there are willing buyers. As explained in the late 1990s by then-Director of the Harvard University Art Museums, James Cuno: "Isn't there . . . enormous value to be gotten from an ancient Greek vase, even if one doesn't know where it came from?"[4] Hence, the debate has taken shape over the risk and the ethics of museums acquiring antiquities that lack an established provenance or ownership history to show that they were excavated legally and documented.

CHASING APHRODITE

Until recently, many museums appear to have ignored these issues, and the J. Paul Getty Museum in Los Angeles was one of them. In fact, as outlined in *Chasing Aphrodite: The Hunt for Looted Antiquities at the World's Richest Museum*, the Getty pushed deliberate ignorance about provenance to a whole new level. Rarely has the collecting of antiquities looked as shameless as it does in this book, in which authors Jason Felch and Ralph Frammolino review three decades of collecting policies and practices at the Getty Museum.

As the book describes, the Getty came late to the process of building a collection of antiquities. J. Paul Getty himself created the museum in 1953, but, according to Felch and Frammolino, the museum was something of a backwater for its first two decades. Getty had been parsimonious about collecting ("Getty's penny-pinching over the years had left him with a collection of largely mediocre art . . . ."), to the point where the new and controversial Getty Museum building in Malibu, which was modeled on a Roman villa, overshadowed the collection when the building opened in 1974 (p. 23).[5] Getty's death in 1976 left the museum well-funded ("the richest art institution in the world") and driven to become a top-tier antiquities museum. According to the authors, it was also unencumbered by ethical, moral, or financial constraints on collecting (pp. 25-28).

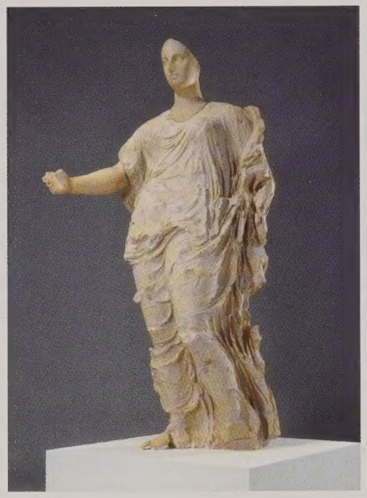

FIGURE 1. ***Statue of a Goddess, Aphrodite (Persephone?)*** **(Greek, 425-400 BC). Limestone and Parian marble with polychrome. Returned by the Getty Museum to Italy.**

To catch up with the more-established antiquities museums of the world, which, the book suggests (p. 60), did not necessarily practice greater diligence than the Getty, but had been able to build their collections from scientific excavations or, at least, long before modern concerns developed about the impact of looting, the Getty had to launch an ambitious acquisition program. But, to buy eye-catching objects fast enough, Felch and Frammolino say, the museum could not be too picky about the provenance of the objects it acquired (pp. 64-73). So, it learned not to ask too many questions about provenance or pay too much attention when an ancient work of art lacked any real paper trail (p. 197).

As investigative journalists for the *Los Angeles Times*, the authors of *Chasing Aphrodite* amassed piles of internal, and undoubtedly confidential, leaked Getty documents concerning the museum's acquisitions, documents which they draw on in the book. With remarkable assistance from one or more still-unidentified Getty insiders, who leaked these sensitive documents while still very fresh (pp. 261-64), Felch and Frammolino were able to observe the Getty's collecting policies and practices from a close-in perspective over a period of years, as the *nouveau riche* museum sought to gain international stature through the acquisition of remarkable objects.

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[4] James Cuno, "Building Collections and Housing Them: Acquisitions, Renzo Piano, and a Master Plan for the Art Museums" in *Harvard University Art Museums Annual Report 1997-98.*

[5] *Chasing Aphrodite*, p. 23. All other citations from *Chasing Aphrodite* will be put in parentheses within the text.

"With remarkable assistance from one or more still-unidentified Getty insiders, who leaked these sensitive documents while still very fresh, Felch and Frammolino were able to observe the Getty's collecting policies . . ."

In *Chasing Aphrodite*, Felch and Frammolino, who were finalists for a Pulitzer Prize in 2006 for their reporting on the Getty for the *LA Times*, have expanded their work into an astonishing narrative of avarice and arrogance throughout the Museum; curators, management, and trustees are all implicated in allegedly criminal behavior. Approaching the international trade in looted antiquities as potential crimes and not merely as charming or endearing idiosyncrasies, Felch and Frammolino give the reader much of contemporary significance to chew on in the Getty's flawed attempt to launch itself to a position of preeminence as a world-class antiquities museum. In their compelling account, Felch and Frammolino discuss the museum's period of aggressive collecting, followed by its accounting for alleged misdeeds through the return to Italy and Greece of objects worth many millions of dollars. Likewise, the authors provide a glimpse of similar conduct at other major U.S. museums: flawed acquisition decisions regarding potentially looted antiquities followed by the embarrassing — and costly — return of illegally obtained objects to source countries (pp. 18-19, 69, 182-83, 207, 283, 293, 307).

Many of the misdeeds at the Getty described by Felch and Frammolino predated the tenure of Marion True, the museum's experienced, Harvard-educated, and, at the time, highly-respected curator of antiquities. True, nonetheless, was indicted in 2005 and tried in Italy for conspiracy to traffic in looted antiquities — the first and only American curator to be so treated — for reasons that have never seemed clear or justified to the museum community and others.

Civil claims that were also brought against True were dropped in 2009 after the Getty agreed to return items sought by Italy, but the criminal proceedings continued. The Italian court, however, eventually dismissed the criminal charges against True in October 2010 on statute of limitations grounds because, after five years, and before True even got a chance to present her defense, the trial had not been finished within the time allotted under Italian law. With that dismissal, Italy's rationale for its unprecedented indictment of a museum curator from another country has not aged well.[6] Nor has it improved with Felch's and Frammolino's frank retelling. Italy's misconduct does not, however, vindicate the Getty or the individual participants in this drama. The Museum's collecting practices were countenanced for all those years by a Board of Trustees, auditors, accountants and lawyers.

Chasing Aphrodite is a chronicle of alleged museum misbehavior on a historic scale: the inventing of donations of objects, the forging of appraisals, the knowing (or apparently knowing) buying and keeping of looted objects, the covering up of unpleasant documents, and the mismanaging, lying, and self-dealing. In the end, the Getty spent millions of dollars for antiquities it could not keep, and returned numerous objects to their countries of origin to buy legal peace and begin to rebuild its reputation.

Felch and Frammolino's book is well written and highly readable, a bit of a non-fiction detective story, and, by comparison to publicly available information, a fair and balanced treatment of a controversial subject. The authors, for the most part, resist the urge to descend into gossip and character assassination, focusing instead on the substance of the Getty's policies and practices. In sum, they address the manner in which greed and arrogance, abetted by lack of leadership and appropriate governance controls, led Marion True and the Getty to the brink of disaster . . . and beyond.

---

[6] "[T]hat the time limit was applied while the trial was under way is a particular peculiarity that made an unfavourable impression on the Americans." Mauro Lucentini in, "Has peace broken out after the trial of Marion True?," *The Art Newspaper* (November 2011), p. 44.

Felch and Frammolino have taken the Getty story a step further, as well, and examined the still-unfolding redemptive process at the museum. Through the authors' eyes, the reader sees the Getty's efforts, as a chastened and more sober institution, to right itself and chart a better course. The Getty has reformed its collecting policies to become a model of ethical behavior; it is now pointing the way for other museums to work with source countries in a more collaborative and less contentious environment.

"Italy's rationale for its unprecedented indictment of a museum curator from another country has not aged well."

Chasing Aphrodite is, therefore, a cautionary tale for us all and especially for collectors and collecting institutions. The fall and rise of the Getty, and its now infamous curator Marion True, is one of the most significant museum histories of the current era. The Getty's resurrection is, nevertheless, a work-in-progress that is still eclipsed by the dramatic tale of alleged crime and scandal told by Felch and Frammolino. In this review, I try to put their authoritative account in the context of antiquities collecting at museums over the past few decades as I have seen it in court, in court decisions and in following the evolution of museum practices.

THE APTLY NAMED DR. TRUE

I first met Marion True in 1989, when she was already antiquities curator at the Getty Museum, respected for her expertise in ancient art. As the lawyer representing the Autocephalous Greek-Orthodox Church of Cyprus, I took her deposition in a lawsuit to recover four mosaic fragments that had been stolen from a church in the Turkish-occupied area of that embattled island nation, mosaics which had been acquired by Indianapolis art dealer Peg Goldberg. A dealer friend of Goldberg's had then offered the mosaics to True for $20 million.

True had dropped a proverbial dime on Goldberg, who had allowed herself to be talked into spending over a million dollars for fragments of the Kanakariá mosaic, not knowing they were about as hot as art objects could possibly be. As a dealer in contemporary art produced in the suburbs of Indianapolis, Goldberg learned far too late that the mosaics described to her as having been rescued by an archaeologist from an unidentified, defunct church in northern Cyprus and being sold by dealers she knew to be questionable, had, in fact, been looted after Turkish troops occupied that part of the island.

The mosaics had been studied by Harvard University's Dumbarton Oaks Byzantine Studies program just before the 1974 Turkish invasion and partition of Cyprus. In a publication that was known to Byzantine scholars worldwide, Dumbarton Oaks thoroughly documented the mosaics *in situ* at the church of the Panaghia Kanakariá in Lythrankomi, high up in the mountainous Karpasse Peninsula in what became and remains occupied Cyprus. In that 1977 book,[7] pre-invasion photographs taken in the nave of the church show a beatific adolescent Christ sitting on Mary's lap, attended by two archangels and encircled by a frieze of apostles, all portrayed in tiny tesserae or tiles of stone and glass, the work of one or more sixth century masters. The mosaics had been ripped crudely from the wall's surface sometime in the years following the Turkish invasion. They languished in Munich or elsewhere for a decade, while the smuggler and his colleagues searched for a buyer willing to ask few questions.

True was appointed the Getty Museum's antiquities curator in 1986. By late 1988, when she first became aware of the mosaics' appearance on the market, she was already avidly pursuing the magnificent limestone and marble, larger-than-life-size, statue of Aphrodite (recently identified as Persephone) of Felch and Frammolino's title, for which the Getty ultimately paid $18 million **(FIG. 1)**. The Getty did not collect Byzantine art (p. 116) and, without hesitation, True called Dr. Vassos Karageorghis, then Cyprus's Director of Antiquities, to alert him to the sudden emergence of the Kanakariá mosaics. Karageorghis, a friend and colleague of True's, had asked the Getty curator to alert him if she ever became aware of any significant objects coming out of Turkish-occupied Cyprus, which had suffered pervasive looting of churches, museums and private collections.

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[7] A.H.S. Megaw and E.J.W. Hawkins, *The Church of the Panagia Kanakariá at Lythrankomi in Cyprus, Its Mosaics and Frescoes* (Dumbarton Oaks 1977).

True's tipoff triggered a valiant effort by the government of Cyprus and the Church to recover the Kanakariá mosaics. The Cyprus Embassy in Washington, D.C. asked U.S. Customs to seize the mosaics. When Customs refused to act (a bellwether of the low priority U.S. law enforcement was then giving to antiquities looting), Cyprus brought suit, obtaining an injunction against sale and later — with Goldberg resisting to the last — prevailing at all levels of the federal courts in the lawsuit over ownership (p. 117).[8] The mosaics now reside in the Church's Byzantine Museum in Nicosia, Cyprus, awaiting the moment when they may return to their former home, the ravaged Kanakariá church.

Even someone as unmotivated in finding the truth as Peg Goldberg (who just recently died) did not have to end up on the receiving end of the wrath of a wounded country. It would have been easy enough for Goldberg to have learned the true origin of the mosaics, had she but tried; she was told they were from northern Cyprus and had come from a church, not out of the ground. Cyprus's Byzantine art expert in the case, Dr. Gary Vikan, now Director of the Walters Art Museum in Baltimore, testified at trial that Cyprus "stands apart" from other Mediterranean countries in its efforts to publicize its losses.[9] As recounted in *Chasing Aphrodite*, True's testimony in the Kanakariá litigation implied that she would have been far more careful than Goldberg, since she saw herself as "always very concerned about being offered objects that come from countries which objects are known to be removed from illicitly . . . ." (p. 115). The Getty Museum, she also said, "would not want to be buying art against the wishes of the country of origin" (p. 116). If only True's statement had been . . . well, more accurate. As Felch and Frammolino detail, True was sometimes diligent and sometimes blind to obvious problems with the beautiful and hugely expensive antiquities she was acquiring for the Getty. Unlike Peg Goldberg, the naïf, True, who played the collecting game at the highest level, had every reason to know there would eventually be a day of reckoning.

Goldberg appeared to have stumbled into the landscape of antiquities looting — she picked up the mosaics in the Freeport section of the Geneva airport — without a compass or a clue. Somehow, though, she came to understand what was required of her, and dutifully performed a caricature of a due diligence effort: contacting the wrong entities (UNESCO in Geneva instead of the Paris headquarters) and asking the wrong questions (about treaties, not the mosaics).[10] Although she was aware of many suspicious circumstances (objects coming from a war zone, an archaeologist supposedly functioning as a dealer in objects removed from a church, other suspect intermediaries, haste, low price),[11] Goldberg never took the fundamental steps one would take to establish that the mosaics were lawfully on the market: contacting Cyprus or the Church, for example; a disinterested expert; Interpol; or IFAR. (She claimed she had contacted IFAR, but IFAR, which kept detailed accounts of such inquiries, had no record because, according to Goldberg, she had seen no reason to pay the $25 charge for a formal search).[12] The court found that Goldberg had failed to act in good faith, in contrast to the steadfast True, always pointing in the right direction; the Court of Appeals praised her as "the aptly named Dr. True."[13]

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[8] *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg*, 717 F. Supp. 13794 (SM.D. Ind. 1989), *aff'd*, *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg and Feldman Fine Arts, Inc.*, 917 F.2d 278 (7th Cir. 1990).

[9] *Ibid.* p. 1389.

[10] *Ibid.* pp. 1400-01.

[11] *Ibid.* pp. 1403-04.

MUSEUMS SEEKING BEAUTY BUT NOT TRUTH

At the time, I was impressed by True, whose testimony I accepted at face value. I had also been surprised, but not quite appalled, when Customs flatly refused to seize well-documented cultural objects that had disappeared from a church in a military occupation zone and were being offered for sale in the United States for mega-millions. I did not realize that looting of antiquities and ancient art was then recognized by most as something akin to a sport to be engaged in by local illegal excavators and then by dealers and various other middlemen, who served as a supply chain to collectors and museums.

Felch and Frammolino report that Getty officials at the time assumed that 90-95 percent of antiquities available on the market had been recently looted (pp. 58, 61). In 1987, Getty Trust Director Harold Williams asked John Walsh, then Director of the Getty Museum: "How can we be good-faith buyers if we knowingly buy stolen goods, accept warranties from dealers we know to be liars, and choose not to investigate their claims?" (p. 90). Yet, the charade went on with looted objects finding their way into the Getty's collection, and other museums as well.

As discussed by Felch and Frammolino, some buyers, like the Met's former Director, the late Thomas Hoving, were even proud of their adroitness at circumventing layers of law and ethical practice. Hoving, who led the Met from 1967 to 1977, boasted of his exploits in *Making the Mummies Dance: Inside the Metropolitan Museum of Art*. He quotes himself saying at the time of the Met's late 1960s acquisition of the Lydian Hoard, a 7th century B.C. group of gold, silver and other valuable objects (which the Met returned to Turkey in 1993): "We all believe the stuff was illegally dug up."[14] A bit later, Hoving orchestrated the Met's purchase of the far more valuable and notorious Euphronios krater, in 1972 (Hoving called it "one of the 10 greatest works created in the Western world"),[15] with a provenance he understood at the time of purchase to be suspicious, if not entirely fabricated.[16] Hoving said that he approached the acquisition of what he came to call the "Hot Pot" (which the Met eventually repatriated to Italy in 2008) with the attitude that he "would consciously avoid knowledge of the history of the vase." (p. 27).[17] With the affable and prominent Hoving and a few others of like mind setting the tone, it is scarcely surprising that heedless collecting remained the order of the day for American museums well into the 1990s. The Getty, as the authors detail, has now been joined by numerous fine institutions and a museum trustee, in returning antiquities to source countries. Most recently, the MFA, Boston, responding to a claim it had long brushed off, returned to Turkey the top half of a statue known as the "Weary Herakles."[18]

> "The anticlimactic end of True's criminal prosecution — much more with a whimper than a bang — left the art trade and museums wondering what the Italians had ever really been about . . ."

How did it come to this, Felch and Frammolino invite us to consider? Our most distinguished museums and the collectors who fund them and furnish them with valuable collectibles are now scrambling to reverse direction, clean up their legacy issues, avoid further legal problems, and project themselves as behaving ethically, as well as legally. At some point decades ago, perhaps around the time Peru lost a major antiquities lawsuit in 1989,[19] many American museums and collectors came to believe that U.S. law and a "mish mash of international laws" (p. 185) were largely ineffectual in preventing or penalizing the illegal movement of antiquities (pp. 60-62), a point True herself made publicly.[20]

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[12] *Ibid.* p. 1403.

[13] *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg and Feldman Fine Arts, Inc.*, 917 F.2d 278 (7th Cir. 1990), p. 283.

[14] Thomas Hoving, *Making the Mummies Dance: Inside the Metropolitan Museum of Art* (Simon & Schuster: New York, 1993); Paperback, Touchstone, 1994), p. 217.

[15] Russell Berman, "Met Chief to discuss 'Hot Pot' in Rome," *N.Y. Sun* (Nov. 11, 2005).

[16] Hoving, pp. 310-320.

[17] *Ibid.* p. 310.

[18] Geoff Edgers, "Making 'Herakles' whole after all these years; The MFA, in a turnabout, to return the top of a statue to Turkey, which long claimed it." *Boston Globe* (July 17, 2011), http://www.boston.com/ae/theater_arts/articles/ 2011/07/17/museum_of_fine_arts_to_return_weary_herakles_statue_to_turkey/?page=full) (accessed April 19, 2012); Geoff Edgers, "'Herakles' united: MFA Returns Roman sculpture's top half to Turkey declaring it's the right thing to do," *Boston Globe* (September 24, 2011), accessed April 19, 2012, http://articles.boston.com/2011-09-24/yourtown/30198640_1_mfa-turkish-officials-loading-dock (accessed April 19, 2012).

"Felch and Frammolino make clear: True and the Getty were not alone in heedless collecting and True's recklessness was accepted and validated by an institution with deeply flawed governance structures and procedures."

ARE OBJECTS INNOCENT UNTIL PROVEN GUILTY?

With little or no fear of the law, museums and collectors were, for decades, freely acquiring undocumented objects from dealers.[21] These antiquities, sometimes flying a flag of convenience, such as Lebanon (p.182),[22] Switzerland (pp. 57, 86-87, 122, 165, 220), or even Great Britain (pp. 93, 201, 203), were viewed as "innocent until proven guilty" and museums feigned a studied lack of concern about the possible looting of an object unless the source country could definitively establish an ownership claim (pp. 60-62). James Cuno explained: "[A]s in the case of Greek vases, [a particular undocumented object] could have been produced for export in the first place, purchased by a southern Italian, and buried by natural circumstances more than two thousand years ago, rediscovered years later, moved, buried again, rediscovered again, moved and buried again, until it was finally unearthed thirty years ago, sold in the trade, and acquired by a museum from a private collector with no documentation as to when it was unearthed and exported from its so-called 'country of origin'."[23]

Dealer Robert Hecht, who was indicted by Italy along with True, articulated this perspective perfectly: "Until someone proves this Euphronios vase or this silver treasure was excavated clandestinely and shows us the hole it came out of, it's as innocent as the Virgin Mary." (p. 182). Like True, Hecht escaped jail; his case, too, was ended on statute of limitations grounds (in January 2012, only weeks before his death, at the age of 92), but it was clear from the beginning that, because of his advanced age, he would never be imprisoned, whatever the outcome of the trial in Rome. Accepting this innocent-until-proven-guilty perspective, when he was former director of the Metropolitan Museum, Philippe de Montebello would say that he wanted to see "irrefutable proof" of the origin of an antiquity (a standard unheard of in civil or criminal law which only require, respectively, a preponderance of the evidence or proof of guilt beyond a reasonable doubt) before he would view a claim as viable (p. 229).

Before 1987, the Getty called its variation on the innocent-until-proven-guilty theme "optical due diligence" (p. 61). According to Felch and Frammolino, this is how it went: the Getty would refrain from asking "the specific question that would elicit the specific answer about provenance that made the material unbuyable" (p. 61). By following this approach, one is not acting in good faith, as Dr. Vikan said more than fifteen years ago, "We are virtuous to the extent that we do not know."[24]

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[19] *Peru v Johnson*, 720 F. Supp. 810 (C.D. Cal. 1989).

[20] This perception began to change with the 2002 criminal conviction of Frederick Schultz, who was then President of the National Association of Dealers of Ancient, Oriental and Primitive Art, for conspiracy to trade in stolen Egyptian antiquities. *United States v. Schultz*, 178 F. Supp. 2d 445 (S.D.N.Y. 2002) (The trial judge said: "A defendant may not purposefully remain ignorant of either the facts or the law in order to escape the consequences of the law.") (pp. 227-28, 301).

[21] Back in 1987, Getty Trust Director Williams noted that the institution faced a moral dilemma – not a legal one – in acquiring potentially looted antiquities, saying: "Are we willing to buy stolen property for some higher aim?" (p. 90).

[22] Hoving, p. 315 ("Beirut was the cliché provenance for any smuggled antiquity out of Italy or Turkey.").

[23] Cuno, "Building Collections."

[24] Walter V. Robinson, "Art buyer fights Holocaust heirs," *The Boston Globe* (May 18, 1997), p. A1.

Just in time for its purchase of the Aphrodite, in 1987, the Getty, established acquisition guidelines under which it would not even ask the marginal questions, but would only request warranties from dealers, even if they were known to be liars carrying fake documents (pp. 90-91, 218). Only for important objects, would the Getty approach the likely country of origin for information, even though these countries often lack resources to conduct the research needed to respond and, should they try, would rarely be able to identify an object looted out of the ground, since the only witnesses to its excavation will likely be the looters and smugglers themselves (p. 92).

It was obvious, even at the Getty, that finding antiquities acceptable to acquire because one has deliberately avoided asking the most important question — or stopped asking questions completely — was always a fool's paradise (pp. 72, 92). The documents leaked to Felch and Frammolino show that Luis Monreal, director of the Getty Conservation Institute, warned museum director John Walsh: "You're putting the Getty on a road to future disaster with foreign governments and public opinion." (p. 92). True, herself, nailed the point at a meeting of the Association of Art Museum Directors in June 2000: "Experience has taught me that in reality, if serious efforts to establish a clear pedigree for the object's recent past prove futile, it is most likely — if not certain — that it is the product of the illicit trade and we must accept responsibility for this fact." (p. 190). Later, True went even further in her communications with the Italian prosecutors, telling them: "[t]he market in antiquities is perhaps the most corrupt and problematic aspect of the international art trade. Accepting the premise that the majority of antiquities on the market were likely to have been removed from their countries of origin illegally, can we justify collecting these objects at all?"[25] Messrs. Felch and Frammolino present us with a series of critical decisions, as the Getty slid into apparent criminality — or close to it — and flailed about. While the authors underline moments of drama and irony — Getty lawyers concealing unpleasant documents (pp. 202, 263); Getty lawyers asking Greece about a statue rather than asking "the suspected source country," Italy (p. 64); the Getty director defending the acquisition of a statue with documents he "believed were suspect" (p. 70); True challenging Italians for evidence that her prized statue of Aphrodite came from Italy, when she was already virtually certain that it did (pp. 88, 178) — they mostly leave the readers free to draw their own conclusions.

"True seems to have paid by far the heavier price and, some say, a disproportionate one."

TRUE DIVIDED AGAINST HERSELF

It is remarkably odd, and yet central to *Chasing Aphrodite*, that True falls squarely on both sides of this divide. She publicly called for diligence and transparency in museum acquisitions and supported the concerns of source countries, just as she did with Cyprus (pp. 164, 185). At the same time, True was secretly examining looted art works in the possession of a questionable dealer (pp. 166-68). Most telling, True privately supported the Getty's "do not ask the specific question" approach to diligence that was dangerously close to Peg Goldberg's and later operated under the 1987 change that dropped asking questions altogether in favor of dealer warranties and letters to source countries. For example, concerning the documentation of the famous Getty Kouros, a possibly fake Greek 5th century B.C. statue of undetermined origin, which the museum bought for $9.5 million, Felch and Frammolino quote her as saying: "I do not think we should find out whether these letters were forged," even though she believed the letters to be fraudulent (pp. 68, 71). Yet, she cited these same documents publicly in defending the Kouros acquisition (p. 79).[26] Concerning a valuable funerary wreath purchased for $1.2 million, True told the Italians it had probably come from Greece and the Greeks that the Italians had claimed it as coming from Italy, but had found "nothing amiss" (p. 123). Both countries claimed it, and in spite of True's twisting and turning, the Getty ultimately returned the wreath to Greece (p. 290).

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[25] Hugh Eakin, "Treasure Hunt," *The New Yorker* (Dec. 17, 2007), p. 65.

[26] Concerning the Kouros documents, Arthur Houghton who was Interim Antiquities Director before True took over, warned: "While self-imposed ignorance of the facts in this case may offer some comfort in the short term, it lays the basis for profound embarrassment later" (p. 72).

Like the Kanakariá mosaics, the fifth century B.C. Aphrodite was always "too hot," as an unnamed dealer is reported to have told Hoving at one point (p. 96). At the time that True was considering the acquisition, for example, Luis Monreal of the Getty Conservation Institute warned a colleague it was "a hot, hot potato" (pp. 91, 93), and, Felch and Frammolino show (presumably from leaked documents), that Monreal even took his fears to the museum director and then on to the Getty Trust CEO (p. 94).

The Aphrodite (Persephone) is a larger than life-size figure, elegantly carved in sandstone and marble with a flowing gown. Such statues usually come from southern Italy or Sicily (pp. 85, 87-88, 202). Given its size, distinctiveness and importance, Italy was certain to complain (p. 88). Before purchase, True inquired about the Aphrodite to archaeologist Malcolm Bell of the University of Virginia, who has devoted many years to excavating the Greek settlement at Morgantina in Sicily, saying the Getty does "not wish to pursue the acquisition in obvious disregard for the laws of Italy" (p. 99). Bell told True that he had never heard of the statue and had no proof of a connection to Morgantina. Given the style and material, however, it could have come from the vicinity, and Bell warned True to be careful (p. 100). Nevertheless, True sponsored the Board's 1988 decision to acquire the Aphrodite, which, it turned out, occurred at the very same time that Italy was opening an investigation into the statue's origins (p. 101). Almost immediately, news of Italy's investigation ensnared the Getty in a highly public controversy that would last until it returned the Aphrodite to Italy in 2011 (pp. 105-06).

TRUE AND THE GETTY HIT BOTTOM

Felch and Frammolino report that the Getty's practices were getting worse in the late 1980s and 1990s, just as other museums were becoming more aware of the need to be careful (pp. 164-65). In particular, the Getty established another, supposedly more ethical and self-protective, acquisitions policy in November 1995, under which the museum could acquire objects that had been documented as out of their country of origin before 1995, the date of adoption of the policy. That policy seemed to be a sham, however, when the Getty used it to justify acquiring the collection of Lawrence and Barbara Fleischman, whose poorly documented antiquities — including what many people thought were potentially hot items (pp. 132, 204) — had been published by the Getty itself just one year earlier in 1994 (p. 145).

According to Felch and Frammolino, Italian prosecutors came to believe that collectors Lawrence and Barbara Fleischman, whom True had wooed to the Getty, coordinated their antiquities purchases with True in the early 1990s (pp. 225-27, 248). The Fleischmans ultimately transferred much of their collection to the Getty, as part sale and part donation. Felch and Frammolino also suggest that True had shaped the transaction so that the Getty would purchase the better documented and therefore less risky objects from the Fleischmans for $20 million, while the Fleischmans would donate the more suspect pieces to the museum (without giving standard warranties) for a potential tax deduction of double that amount (p. 204).[27]

The undoing of True, the Getty, and others came with the rude discovery that many seemingly undocumented antiquities had, in fact, been carefully documented as looted (pp. 175-76). In 1995, Italian authorities raided a warehouse leased by Italian art dealer Giacomo Medici in the Freeport section of the Geneva airport and related locations. They uncovered boxes of documents, including Polaroid pictures of apparently looted objects — some showing the progression from dirt-covered and broken to modest reconstruction to masterful restoration (p. 175). There was even an organizational chart showing American dealer Robert Hecht at the top and Medici as one of the middlemen (p. 151).

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[27] Christopher Reynolds and Ralph Frammolino, "Beleaguered Member of Getty Trust's Board Resigns," *Los Angeles Times* (January 26, 2006), http://articles.latimes.com/2006/jan/26/local/me-getty26 (accessed April 19, 2012).

It was the ultimate collection of smoking guns, discussed in detail by Peter Watson and Cecilia Todeschini in *The Medici Conspiracy: The Illicit Journey of Looted Antiquities — From Italy's Tomb Raiders to the World's Greatest Museums.* The documents also play a major role in the unfolding Getty Museum / Marion True affair, as told by Felch and Frammolino. Square in the Italians' crosshairs, the Getty found itself nearly defenseless, Felch and Frammolino suggest, since it had based its "optical due diligence" and "ask no questions" policies on the belief that undocumented antiquities would stay undocumented and, so, chickens of this particular kind would never come home to roost (pp. 89-90).

Before long, True was sued civilly and also indicted in Italy and Greece, the Greek criminal case being quickly dismissed on statute of limitations grounds. The Italians indicted Hecht and Medici in addition to True for conspiracy to traffic in looted antiquities. All denied the charges. After requesting an expedited trial, Medici was convicted (pp. 252-53). He appealed, but his final appeal was rejected by the Italian court. True's trial in Italy, proceeding generally one day a month, dragged on, as noted above, for five years. It was well covered in 2007 by Hugh Eakin in *The New Yorker*;[28] and was ultimately dismissed, as was the companion case against Hecht, both, as noted, on statute of limitations grounds.

True, however, had already seen her reputation severely damaged, thanks in large part to the reporting of Felch and Frammolino in the *Los Angeles Times*. As if her troubles weren't enough, while True's criminal case was pending, it came to light that she had earlier obtained a loan that may have come from an antiquities dealer to allow her to buy a home in the Greek isles (pp. 137-38, 264). *Chasing Aphrodite* relates that the Fleischmans agreed to take over True's $400,000 debt, and funded their own loan to her at the same time that they were selling their antiquities to the Getty for millions (p. 146). True was forced to resign when the loans came to light.

THE WAY HOME

In 2007, without admitting guilt or wrongdoing, the Getty Museum agreed to return about forty valuable antiquities to Italy, including the Aphrodite (Persephone), but the Getty settlement did not get True off the hook on the criminal charges. That step was accomplished by the clock, which the Italians had not seemed to be watching — if they had ever intended to. The anti-climatic end of True's criminal prosecution — much more with a whimper than a bang — left the art trade and museums wondering what the Italians had ever really been about, other than making an example of True and getting back as many objects as they could, rather than seeking to hold her responsible for her alleged actions or asserting some matter of principle (pp. 226, 231-32, 312).

True's indictment and trial shocked American museums, opening up, as it did, the possibility that other curators could be prosecuted in foreign countries. To address this threat, in 2006, the Getty revised its acquisitions guidelines again, joining only a handful of institutions, including Harvard and the University of Pennsylvania, that required, for ancient and archaeological materials, a documented provenance back to 1970, the date of signing of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (p. 296). The Getty's adoption of this much stricter acquisition policy was extremely influential say Felch and Frammolino (p. 298). Since 2008, the Getty's policy became codified in the antiquities acquisition guidelines of the two major U.S. museum associations: the Association of Art Museum Directors and the American Association of Museums.

According to Felch and Frammolino, True and the Getty have paid for their misdeeds, and the museum world is a better place because they have. True seems to have paid by far the heavier price and, some say, a disproportionate one. The authors conclude: "True, at once the greatest sinner and the greatest champion of reform, has been made to pay for the crimes of American museums." (p. 312). In his own review of *Chasing Aphrodite*, Malcolm Bell concludes that True's "contributions outweigh her mistakes," and that if he were "today to be asked to recommend someone to fill a major museum position, she would be the first person to come to [his] mind."[29] The authors leave it to us to make our own judgments on the impact of True's highly visible double-talking combined with her now-revealed secret-dealing may have had on museum reputations generally, but some points Felch and Frammolino make clear: True and the Getty were not alone in heedless collecting and True's recklessness was accepted and validated by an institution with deeply flawed governance structures and procedures (pp. 71-73, 198-99, 205, 215-16, 218, 240-242, 247-51, 263, 268-71, 305).

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[28] Hugh Eakin, "Treasure Hunt," *The New Yorker* (December 17, 2007).

"The Getty has reformed its collecting policies to become a model of ethical behavior."

In another twist to this tale, Cuno, who remains one of the most vocal critics of "nationalist retentionist cultural property laws" of source countries and an outspoken advocate of the right of museums to acquire unprovenanced antiquities, became Director of the Getty Trust, parent of the Getty Museum in 2011.[30] Led by the Getty, the Metropolitan and the MFA, Boston, the shift of the American museum community to more cooperative and collaborative dealings with source countries seems well-rooted, and Cuno says he intends to abide fully by the Getty's highly restrictive new acquisition policy,[31] even though he has long maligned the rule that would require museums to restrict themselves to acquiring only objects that can be documented back to 1970.[32] Cuno explains his position by saying that the Getty's 1970-based policy helps the institution preserve its relationships with source countries and continue its conservation work around the world.[33]

Cuno also made clear that in filling the vacancy for the position of director of the Getty Museum, he sought someone with "an appetite for risk in acquiring extraordinary works of art."[34] He has selected Timothy Potts, a former archaeologist who has served as director of the Kimbell Art Museum in Ft. Worth, Texas, and, since then, at the Fitzwilliam Museum in Cambridge. Pro-collecting, highly experienced and respected, Potts has been involved in formulating museum association antiquities policies and has weathered at least one matter involving antiquities of questionable provenance while at the Kimbell.[35] There can be little doubt that Felch and Frammolino, who have set up a website — chasingaphrodite.com — to monitor issues covered in their book, will be watching the Getty's next steps closely; the rest of us will be awaiting further developments as this continuing saga unfolds.

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[29] Malcolm Bell, "The Beautiful and the True," *The Wall Street Journal* (July 2, 2011).

[30] James Cuno, *Who Owns Antiquity? Museums and the Battle Over our Ancient Heritage* (Princeton University Press, 2008).

[31] Jori Finkel, "A Conversation with Getty Trust CEO James Cuno", *Los Angeles Times* (August 6, 2011), http://articles.latimes.com/2011/aug/06/entertainment/la-et-jim-cuno-first-week-at-getty-20110806.

[32] Cuno, "Building Collections."

[33] Jason Felch, "James Cuno says he accepts the Getty's antiquities acquisition policy," *Los Angeles Times* (May 12, 2011), http://articles.latimes.com/2011/may/12/entertainment/la-et-cuno-antiquities-20110512 (accessed April 19, 2012).

[34] *Ibid.*

[35] Ron Stodghill, "Do you know where that art has been?" *New York Times* (March 18, 2007), http://www.nytimes.com/2007/03/18/business/ yourmoney/18Art.html?pagewanted=all.

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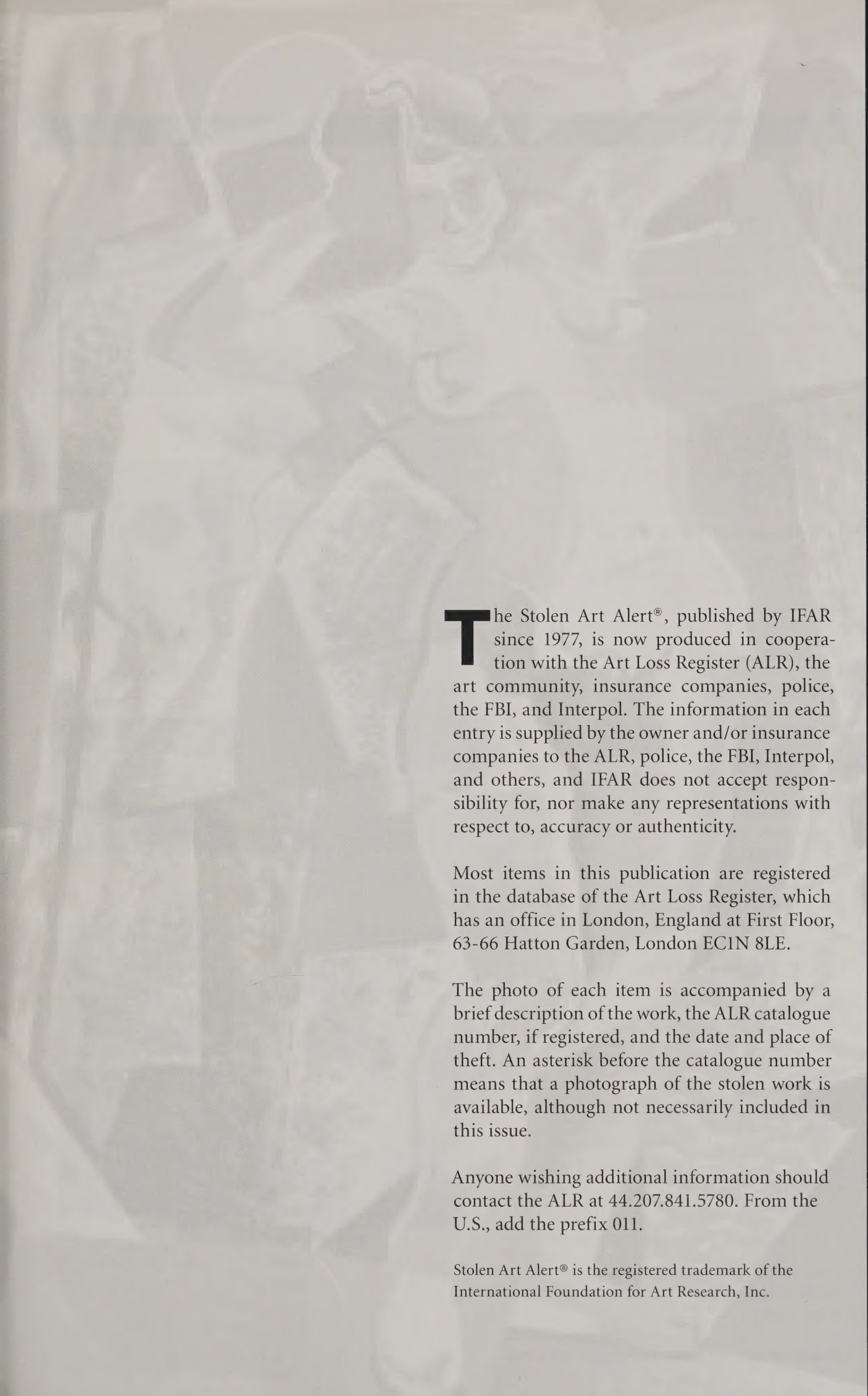

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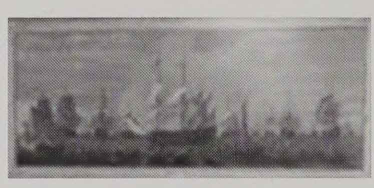
STOLEN ART*

PAINTINGS

*The following two paintings were stolen from a private residence in Hampshire, England on December 5, 2011. *L12.95:*

87. **FRANCIS HOLMAN** (English, 1729-1784). ***British Men-of-War and other shipping at anchor,*** Oil on canvas. 40.64 x 109.22 cm (16" x 43").

88. **THOMAS VAN APSHOVEN** (Flemish, 1622-1664). ***Village Scene with Children and Harvest Dance.*** Oil on canvas. 59.69 x 101.6 cm (23 ½" x 40").



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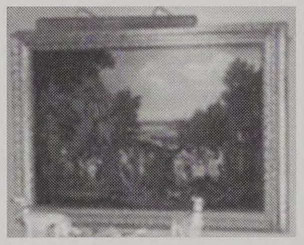
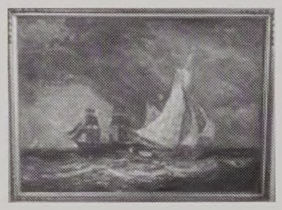


88

*The following two paintings were stolen from a private residence in Corea, Maine in April 2012. *L12.330:*

89. **REYNOLDS BEAL** (American, 1866-1951). ***Shipping off Rockport.*** Oil on canvas. 40.64 x 55.88 cm (16" x 22").

90. **J. WOOD** (19th century). Four *Master Bark Under Full Sail off Blue Hill,* ME. Oil on canvas. 50.8 x 76.2 cm (20" x 30").



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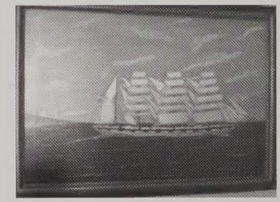


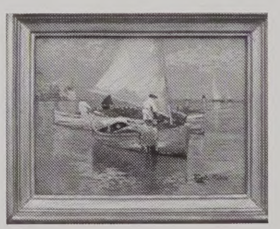
90

The following three paintings by **FAUSTO PRATELLA** *(Italian, 1888-1964) were stolen from a gallery in Atlanta, GA on February 1, 2012. *L12.127:*

91. ***Collecting Fruits of the Sea.*** Oil on canvas. 15.24 x 20.32 cm (6" x 8").

92. ***Fishing by Moonlight.*** Oil on canvas. 15.24 x 20.32 cm (6" x 8").

93. ***The Bay of Naples at Dusk.*** Oil on canvas. 15.24 x 20.32 cm (6" x 8").



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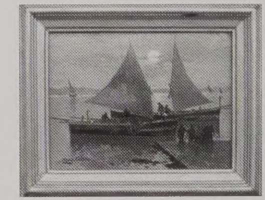

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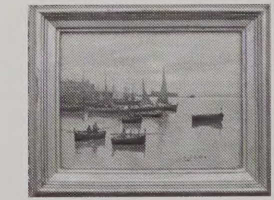
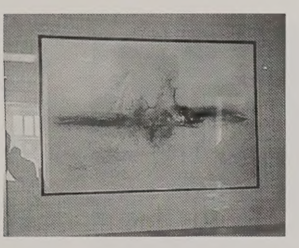


93

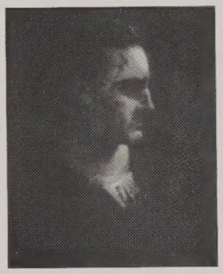
** Numbering for the year 2011/2012 Cumulative Index of Stolen Art began with the last issue, Vol. 13, nos. 1 and 2.*

94. FRANK WESTON BENSON (American, 1862-1951). ***Women in Field,*** 1909. See color photo on inside back cover.



95

95. GERALD DAVIS (Irish, 1938-2005). ***Evening Day,*** 1990. Watercolor on canvas. 18.01 x 24 cm (approx. 7” x 9 ½”). *L12.91. Stolen from a warehouse in England on January 18, 2012.

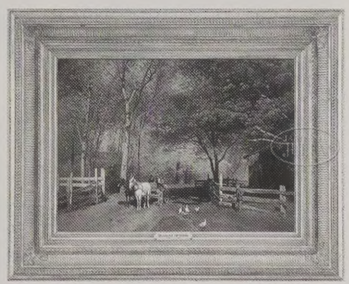


96

96. JOHN DECKER (German/American, 1895-1947). ***John Barrymore as Hamlet,*** 1922. Oil on board. 22.86 x 17.78 cm (9” x 7”). Signed l/l. *L12.278. Stolen from a business office in New York on March 14, 2012.

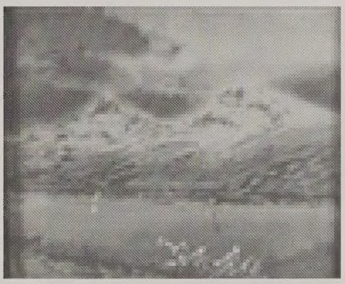
97

97. MARCO A. HERRERA (Marko) (Ecuadorian, contemporary). ***Cloud 9, Edition no. 146,*** 2008. Oil, encaustic, and beeswax. 121.92 x 91.44 cm (48” x 36”). Verso: mko/markoherrera. *L12.260. Stolen from a warehouse in Washington, DC on September 2, 2011.



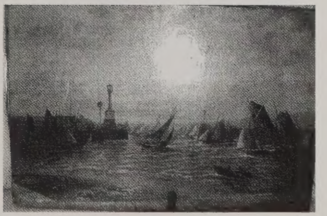
98

98. HERMAN HERZOG (German/American, 1831-1932). ***Road by the Farm.*** Oil on canvas. 35.56 x 48.26 cm (9 ¼” x 19”). Signed l/r. *L12.459. Stolen from a private residence in Tulsa, OK on January 1, 2009.



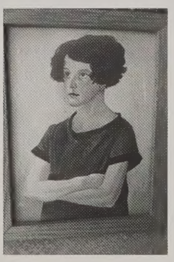
99

99. LASZLO MEDNYANSKY (Hungarian, 1852-1919). ***Alpine Lake Landscape,*** 1900. Oil on canvas. 13 x 16.99 cm (approx. 5 ¼” x 6 ¾”). Verso: stamped and numbered 186. *L12.522. Stolen from a gallery in Warwickhire, England on May 31, 2012.



100

100. WILLIAM MITCHELL (English, 1806-1900). ***Herring Fishing Boats Leaving Port Sunday Evening July 7*** 1889. Oil on canvas. 51 x 76.5 cm. (approx. 20” x 30 ¼”). *L12.272. Stolen from a museum in Cumbria, El Salvador between June 2005 and March 2008.



101

101. OTTO MUELLER (German, 1874-1930). ***Portrait of Ruth Fabian,*** aged c. 9-13, c. 1925. Oil. *L12.152. Stolen in transit between Berlin and Prague in 1936.

102. ZORAN ANTONIO MUŠIČ (Italian, 1909-2005). *Ida (Ida Barbarigo, portrait of the artist's wife)*, 1985. Oil on canvas. 40.49 x 35.51 cm (approx. 16" x 14"). Signed "Zoran" l/l and "Music" l/r. *L12.359. Stolen from a private residence in Paris on April 6, 2012. See also item no. 142 below.

103. ALEXIS ROCKMAN (American, born 1962). ***Prairie***, 2001. Oil and acrylic on wood. 121.92 x 101.6 cm (48" x 40"). Signed verso. *L12.248. Lost in transit between two storage facilities in Brooklyn, NY on July 16, 2009.

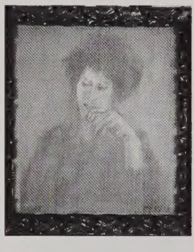
104. CLARKSON STANFIELD (English, 1793-1867). ***Shipping off the Coast with a Harbor in the Distance.*** Oil on canvas. 68.99 x 94.01 cm (approx. 27 ¼" x 37"). *L12.255. Stolen from a private residence in Hastings, England on March 12, 2012.

105. HEINZ STERZENBACH (German, born 1941). ***Square of Nikolai Church,*** 1995. Egg tempera and oil on canvas. 31.5 x 23.6 cm (approx. 12 ½" x 9 ¼"). *L12.578. Stolen from a gallery in Berlin, Germany on June 6, 2008.

106. ANTHONY THIEME (Dutch, 1888-1954). ***Boats in the Harbor.*** Oil on canvas. 45.69 x 50.8 cm (approx. 18" x 20"). Verso: Darvish Collection labeL *L12.501. Stolen from a gallery in Naples, FL on May 5, 2012.

107. UNKNOWN. ***Horse with Trappings and Pack.*** Painting on plaster. 39.5 x 48.01 cm (approx. 15 ½" x 19"). May be marked with catalogue no. Br E 3. *L12.82. Stolen from a government office in London on January 17, 2012.

108. UNKNOWN. ***Martyrdom of St. Edmund*** (English, 16th century). Oil on wood. 62.89 x 28.3 cm (approx. 24 ¾" x 11 ¼"). *L12.108. Stolen from a church in Essex, England on January 22, 2012.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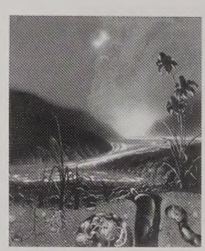
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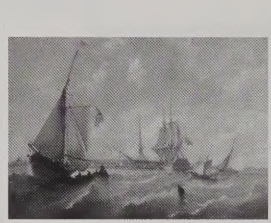
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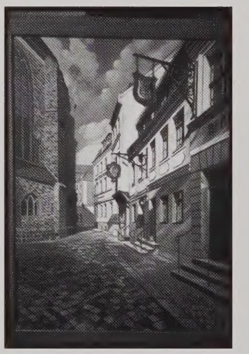
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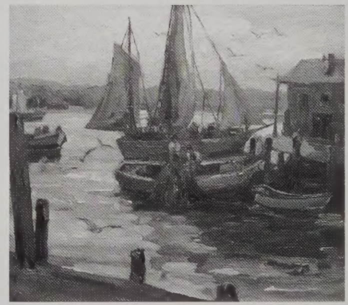
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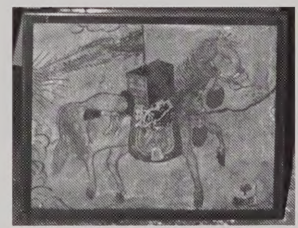
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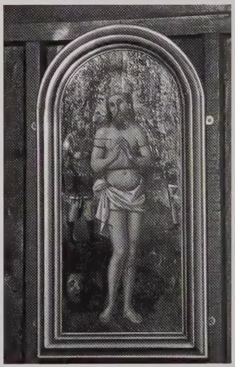
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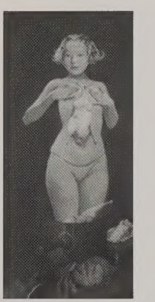

109

109. WEI DONG (Chinese, born 1968). *Girl with Duck #1,* 2007. Acrylic on canvas. 167.49 x 75.01 cm (approx. 66" x 29 ½"). *L12.60. Lost in transit between New York City and Hong Kong.

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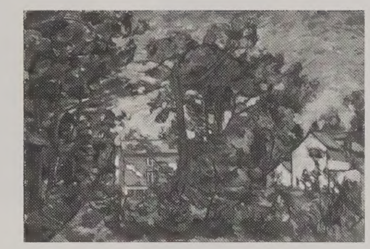
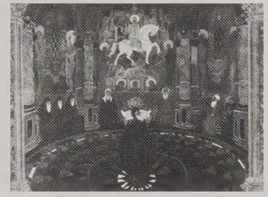
*The following paintings by Russian artists were stolen in transit in Paris on March 8, 2012. *L12.306. See also item nos. 120-124 below:*



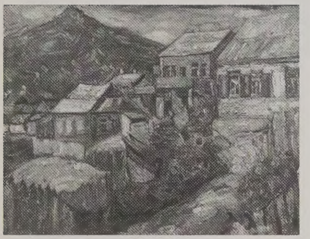
110

110. DAVID VLADIMIR BARANOFF-ROSSINÉ (Russian, 1888-1942). ***House Among the Trees,*** 1900. Oil on canvas. 49.5 x 72.01 cm (approx. 19 ½" x 28 ¼"). Has a stamp of the wife of Baranoff-Rossiné.



111

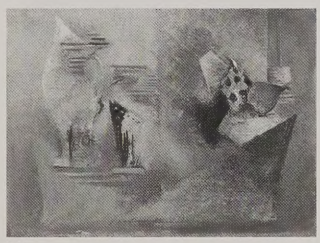
111. LEONID MILHAILOVICH BRAILOVSKY (Russian, 1867-1937). ***Church Interior,*** 1921. Oil on board. 51.99 x 68.5 cm (approx. 20 ½" x 27").



112

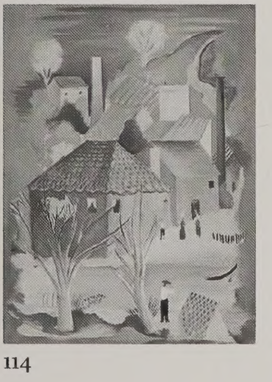
112. DAVID DAVIDOVICH BURLIUK (Ukrainian/American, 1882-1967). ***Japanese Village.*** Oil on cardboard. 45.01 x 58.7 cm (approx. 17 ¾" x 23 ¼").

SERGE FÉRAT (Russian/French, 1881-1958):



113

113. ***Colorful Abstract Composition,*** 1930. Oil on canvas. 59.99 x 81 cm (approx. 23 ½" x 32").



114

114. ***Red House,*** 1930. Oil on canvas. 81 x 59.99 cm (approx. 32" x 23 ½").

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115. KONSTANTIN YEGOROVICH MAKOVSKY (Russian, 1839-1915). ***Portrait of the Artist's Wife,*** 1900. See color photo on inside back cover.

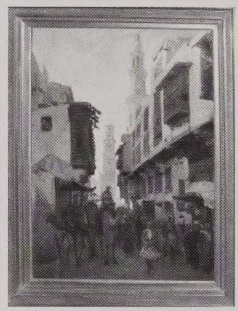
NIKOLAI MAKOVSKY (Russian, 1842-1886):

116. *Street Scene in Cairo,* 1850. Oil on board. 63.5 x 38 cm (approx. 25" x 15").

117. *View of Cairo,* 1870. Oil on panel. See color photo on inside back cover.

118. VLADIMIR EGOROVITCH MAKOVSKY (Russian, 1846-1920). ***The Fair in Poltava,*** 1900. Oil on board. 45.01 x 53.01 cm (approx. 17 ¾" x 20 ¾").

119. ILIA NIKOLAEVICH ZANKOVSKI (Russian, 1843-1919). ***Sea Scene by Night,*** 1900. Oil on canvas. 95.5 x 138 cm (approx. 37 ½" x 54 ¼"). Signed l/r.



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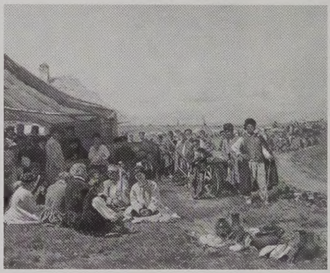

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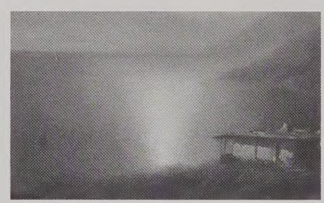


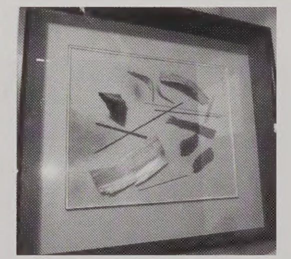
119

MIXED MEDIA

*The following two works were stolen in transit in Paris on March 8, 2012. *L12.306. See also item nos. 110-119 above and 122-124.*

120. JURIJ PAVLOVIC ANNENKOV (Russian, 1889-1974). ***Abstract Composition Collage,*** 1921. Collage and paper with wood in a glass case. 59 x 65.99 x 10.31 cm (approx. 23 ¼" x 26" x 4").

121. DAVID VLADIMIR BARANOFF-ROSSINÉ (Russian, 1888-1942). ***Cubist Nude,*** 1900. Mixed media on cardboard. 65.51 x 53.29 cm (approx. 25 ¾" x 21"). Has a stamp and signature by the wife of Baranoff-Rossiné.



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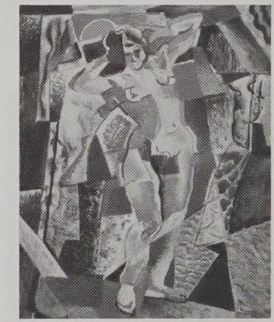
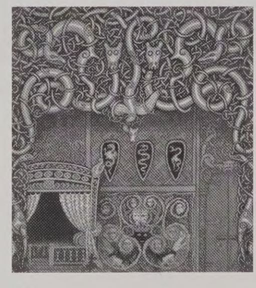


121

WORKS ON PAPER

The following three works on paper by NIKOLAI KONSTANTINOVICH KALMAKOV *(Russian, 1873-1955) were stolen in transit in Paris with other works by Russian artists on March 8, 2012. *L12.306. See also item nos. 110-121 above:*

122. ***Set Design of a House,*** 1900. Gouache and gold paint on paper. 40.0 x 38 cm (approx. 15 ¾" x 15").



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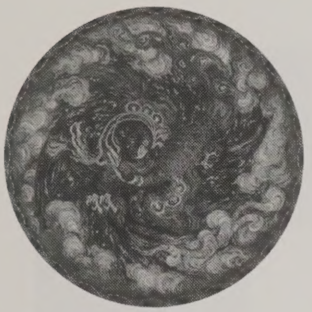
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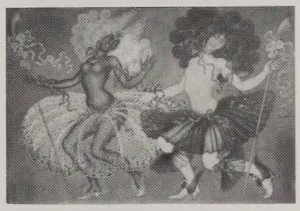
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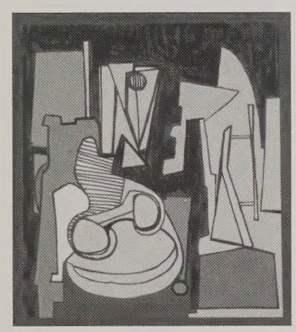
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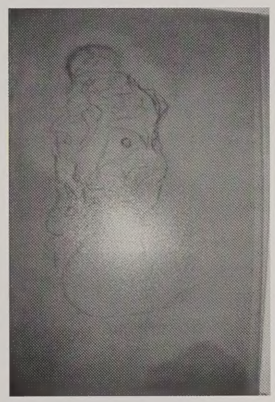
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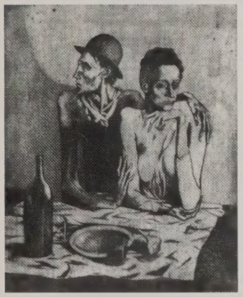
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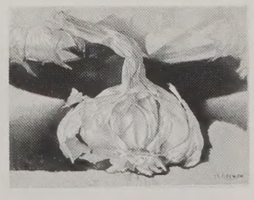
129

123. ***Two Birds,*** 1900. Gouache and gold paint on paper. 70.99 x 75.01 cm (approx. 28” x 29 ½”).

124. ***Two Dancing Women,*** 1900. Tempera on paper. 56.49 x 6.3 cm (approx. 22 ¼” x 30’).

The following two works on paper by JUDITH ROTHSCHILD *(American, 1921-1993) were stolen from a business office in Fort Washington, PA on February 9, 2012. *L12.211:*

125. ***Untitled,*** 1945. Gouache on paper. See color photo on inside back cover.

126. ***Untitled,*** c. 1947. Gouache on paper. 21.59 x 19.35 cm (approx. 8 ½” x 7 ½”).

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127. GUSTAV KLIMT (Austrian, 1862-1918). ***Nachlass.*** Pencil on paper. Signed l/r. 46.99 x 30.00 cm (approx. 18 ½” x 12 ¼”). *L12.163. Stolen in transit between Malaga, Spain and London, England on January 1, 2004.

128. PABLO PICASSO (Spanish, 1881-1973). ***Le Repas Frugal,*** 1904. Etching. 46.51 x 27.71 cm (approx. 18 ¼” x 11”). *L12.478. Stolen from a private residence in Braunschweig, Germany on April 4, 2012.

129. REINER SCHWARZ (German, born 1940). ***Garlic,*** 2000. Colored pencil on paper. 57 x 77.01 cm (approx. 22 1/2” x 30 1/4”). Signed l/r: R. Black 2000/1. *L12.263. Stolen from the artist’s residence in Berlin, Germany on March 11, 2012.

130. SAUL STEINBERG (American, 1914-1999). ***Banlieu II,*** (1957). *L12.100. See color photo on inside back cover.

PHOTOGRAPHS

The following five silver gelatin prints by ANSEL ADAMS *(American, 1902-1984) were stolen after the owner accidentally left them at an ATM in San Francisco, CA on February 4, 2012. *L12.283:*

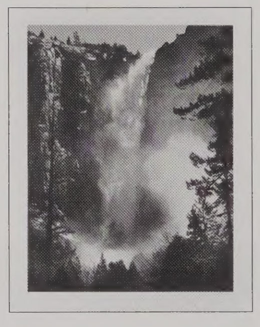
131. ***Bridalveil Fall, Yosemite National Park, CA,*** 1927. 23.8 x 18.72 cm (approx. 9 ¼" x 7 ¼"). Signed in pencil on the mount, recto. The artist's stamp and the title are on the mount, verso.

132. ***Ferns, Valley Floor,*** 1948. 24.46 x 19.38 cm (approx. 9 ½" x 7 ½"). Signed in pencil on the mount, recto. The artist's stamp and the title are on the mount, verso.

133. ***Jeffrey Pine, Sentinel Dome, Yosemite National Park,*** 1940. 16.69 x 24.46 cm (approx. 6 ½" x 9 ½"). Signed in pencil on the mount, recto. The artist's stamp and the title are on the mount, verso.

134. ***Mirror Lake, Yosemite National Park, CA,*** 1936. 19.38 x 24.13 cm (approx. 7 ½" x 9 ½"). Signed in pencil on the mount, recto. The artist's stamp and the title are on the mount, verso.

135. ***Oak Tree, Snowstorm, Yosemite National Park, CA,*** 1948. 24.13 x 19.25 cm (9 ½" x 7 ½"). Signed in pencil on the mount, recto. The artist's stamp and the title are on the mount, verso.



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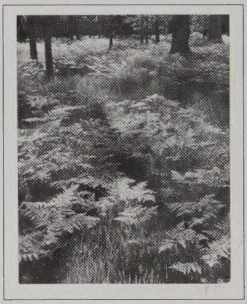

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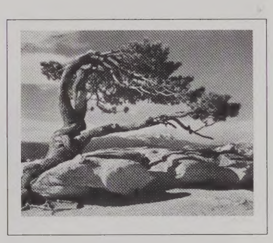

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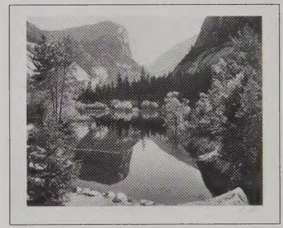

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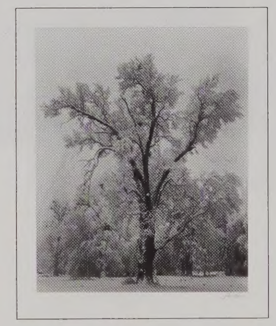
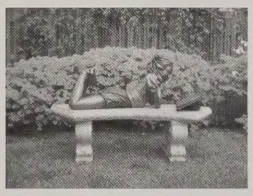


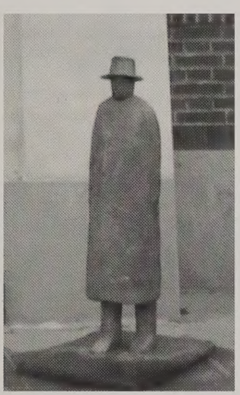
135

SCULPTURE



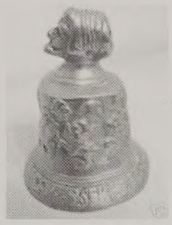
136

136. **ROSALIND COOK** (American, born 1946), ***Story Time for One,*** 2004. Bronze. Ed. No. 5/39. 45.72 x 104.14 x 40.6 cm (18” x 41” x 16”). Wt: 700 lbs. The sculpture was cast in two parts – a girl and a book – and affixed to a cement bench. *L12.402. Stolen from a private yard in Tulsa, OK on April 29, 2012.



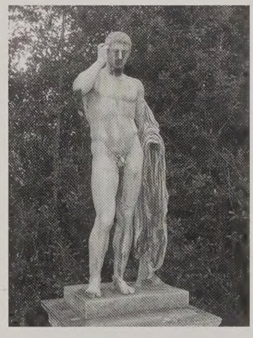
137

137. **JEAN MICHEL FOLON** (Belgian, 1934-2005). ***Personage,*** 1992. Bronze. 100 x 59.99 x 40.01 cm (approx. 39 ¼” x 23 ½” x 15 ¾”). Signed. Has stamp of foundry Barelier. *L12.226. Stolen from a public garden in Antwerp, Belgium on February 29, 2012.



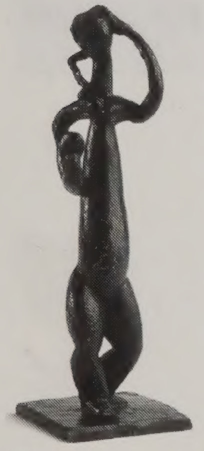
138

138. **FRANZ HEMONY** (Dutch, 17th century). ***Handbell.*** Bronze. 10.01 x 8.2 cm (approx. 4” x 3 ¼”). Heavily embossed around the rim with the following words: JACOVES SERKE HEFT MY GHEGOTEN A 1370. *L12.350. Stolen from a gallery in Chicago, IL on June 1, 2000.



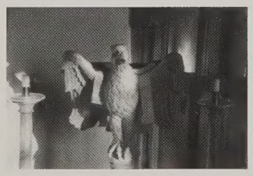
139

139. **KLEOMENES** (Roman, 1st century BC). ***Marcellus “Germanicus.”*** 19th-century bronze casting. 118.01 x 45.01 cm (approx. 46 ½” x 17 3/4”). *L12.141. Stolen from a public garden in London on January 25, 2012.



140

140. **HENRI LAURENS** (French, 1885-1954). ***Female Standing in Front of a Mirror,*** 1949. Bronze. 27.99 x 8.99 cm (approx. 11” x 3 ½”). Ed no. 2/6. On the back, monogrammed and numbered on the base: HL 2/6. Stamp on base reads: “Valsuani with lost wax / Valsuani A la cire perdue” of the Gallery Louise Leiris, Paris n.349?/2. *L12.98. Stolen from a gallery in Paris, France on January 10, 2012.



141

141. **H. & K. MABBITT** (English, contemporary). ***Lectern,*** 1982. Oak. 152.4 x 71.12 x 38.1 cm (60” x 28” x 18”). Has an inscription dedicating the lectern to Basin Bower.*L12.171. Stolen from a church in Colchester, Essex, England on February 1, 2012.

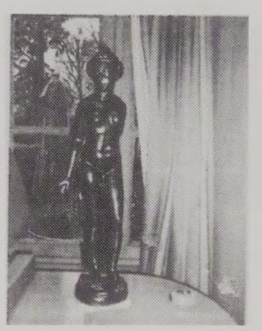
142. **ARISTIDE MAILLOL** (French, 1861-1944). ***Nude Female (Bather).*** Bronze. 67.01 x 18.01 cm (approx. 26 ¼" x 7"). Signed "M" on the base. Edition Vollard. *L12.359. Stolen from a private residence in Paris, France on April 6, 2012. See also item no. 102 above.

143. **ARMAND ALBERT RATEAU** (French, 1882-1938). ***Perpetual Calendar,*** 1925. Bronze. 32 x 16.51 cm (approx. 12 ½" x 6 ½"). *L12.79. Stolen from a gallery in Paris, France on January 4, 2012.

144. **NICK TURVEY** (English, contemporary). ***The Binding Problem,*** 2011. Marble. 80.01 x 65 x 65 cm. (approx. 31 ½" x 25 ½" x 25 ½"). *L12.154. Stolen from a private residence in London, England on January 29, 2012.

145. **UNKNOWN** (English, 10th century). ***Knight Holding Heart, 1100.*** Stone. 22.86 x 15.24 cm (9" x 6"). *L12.461. Chiseled from the stone window frame of a church in Herefordshire, England on May 9, 2012.

146. **UNKNOWN** (English, 16th century). ***Reredes.*** Alabaster. 19.99 x 15.01 x 0.99 cm (approx. 7 ¾" x 6½"). *L12.285. Stolen from a church in Oxfordshire, England on March 9, 2012.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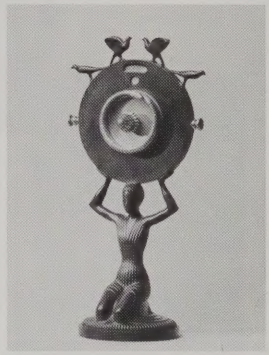
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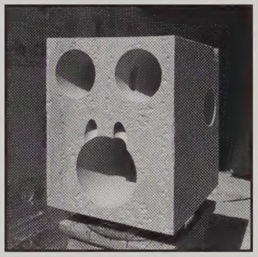
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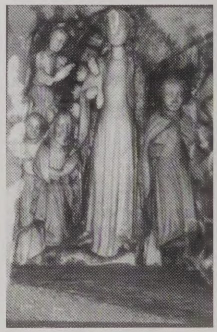
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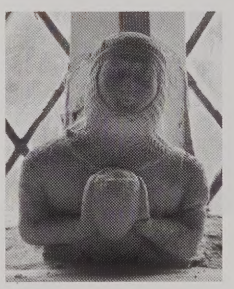

145

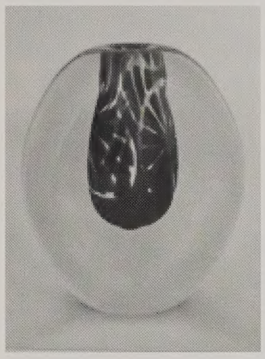
EGYPTIAN ANTIQUITIES

147. UNKNOWN (Egyptian, New Kingdom, 18th dynasty, 1550-1400 BC). ***Stele of the Son of King Ahmose.*** Limestone. See color photo on inside back cover.

DECORATIVE ARTS

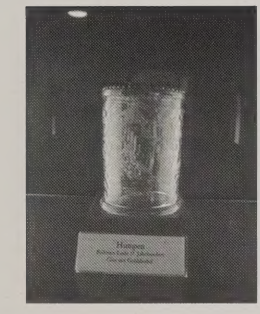
GLASS

148. HÖGLUND ART GLASS (Kiwi, contemporary). ***Rainforest Vase,*** 2003. Glass. 24.51 x 19.99 cm (9.65" x 7.87"). Wt: 9.33 kg. Engraved on the bottom: CRFG141. *L12.575. Stolen from a private residence in Amsterdam, The Netherlands on May 31, 2012.



148

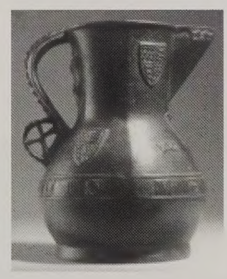
149. BORCHARDT JOHAN WIEGEL I (Dutch, 17th century). ***Tankard with gold lid.*** 17.3 x 9.8 cm (approx. 6 ¾" x 3 ¾". Glass with gold. The tankard has a maker's mark and brand city on the lid. *L12.54. Stolen from a museum in Lundeberg, Germany on December 14, 2011 along with item nos. 153 and 154 below.



149

BRONZE

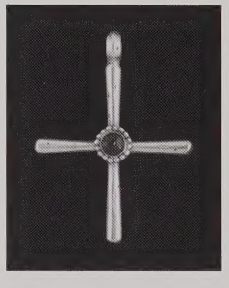
150. UNKNOWN (14th century). ***Wenlok Jug.*** Bronze. 31.5 x 18.8 cm (approx. 12 ½" x 7 ½"). Handle has the English Royal Arms and the East Anglian Coat of Arms and is inscribed "My Lord Wenlok." Jug has hinge marks indicating it was lidded. *L12.440. Stolen from a museum in Luton, England on May 12, 2012.



150

GOLD

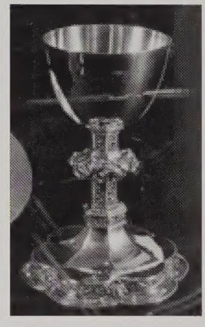
151. **UNKNOWN.** (6th-7th century AD). *Byzantine Cross.* Gold with garnet. 5.21 x 4.01 cm (approx. 2" x 1 ½"). *L12.92. Stolen from a private residence in London, England on January 2, 2012.



151

SILVER

152. **UNKNOWN.** ***Chalice.*** Silver with 6 precious stones on the stem. 25.4 x 12.7 cm (10" x 5"). *L12.558. Stolen from St. Botolph Church in London, England on May 30, 2012.



152

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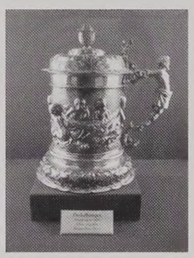
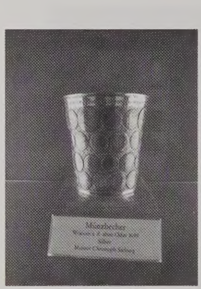
*The following two items were stolen from a museum in Lundeberg, Germany on December 14, 2011 along with item no. 149 above. *L12.54:*

153. **PETER ÖHR I** (Dutch, 17th century). ***Deckelhumpen,*** 1655. Silver gilt. 26.49 x 18.39 cm (approx. 10 ½" x 7 ¼"). The cup has a maker's mark on either side of the top of the handle.



153

154. **CHRISTOPH SEIBURG** (Dutch, 17th century). ***Münzbecher,*** 1698. Silver. 11/71 x 11 cm (approx. 4 ½" x 4 ¼"). Signed on the lip: W, CS, FW.

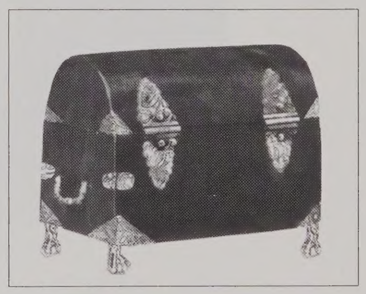


154

DECORATIVE ARTS

MISCELLANEOUS

155. Box (Dutch, 17th century). Wood with a brown tortoise-shell veneer, sterling silver fittings and red velvet lining. Original silver key inside. Approx. dimensions: 7" high x 5" wide x 8 ¾" deep. The silver lock plate is decorated with standing lions on either side. The back hinges and lock plates are surrounded by scrolled etchings in silver. *L11.1147. Stolen from a private residence in Brookline, MA in August 2011. (Image is an artist's rendering.)

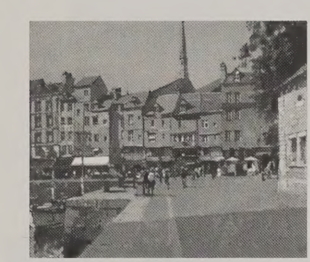


155

MISSING ART*

PAINTINGS

The following three paintings by DAVID SAWYER *(English, born 1961) were missing in London, England on August 15, 2010. *L12.16:*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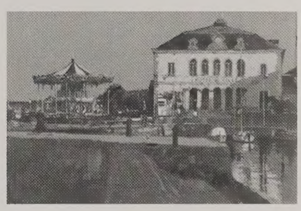
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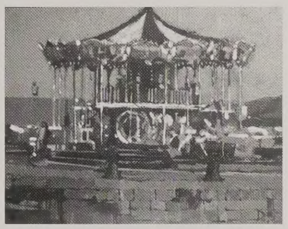
9

7. ***Along the Quayside – Honfleur,*** 2008. Oil on board. 50.8 x 60.96 cm (20" x 24").

8. ***Carousel, Quayside – Honfleur,*** 2008. Oil on board. 50.8 x 76.2 cm (20" x 30").

9. ***Carousel, Honfleur,*** 2008. Oil on board. 15.24 x 20.32 cm (6" x 8"). Signed l/r D.S.

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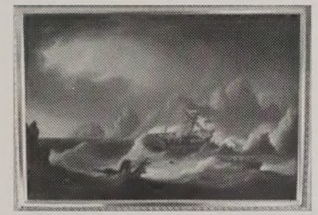
*The following three paintings were missing from a private residence in Corea, Maine on April 6, 2012. *L12.330:*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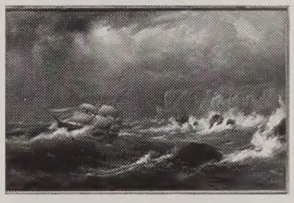
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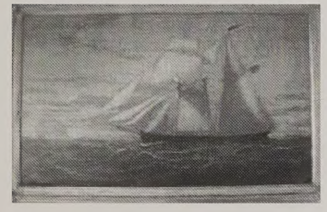
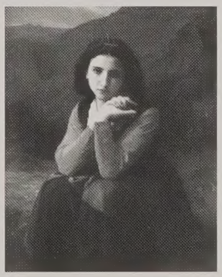

12

10. THOMAS BUTTERSWORTH (English, 1768-1842). ***To the Rescue.*** Oil on canvas. 54.61 x 80.01 cm (21 ½" x 31 ½").

11. MAURITZ FREDERIK HENDRICK DE HAAS (Dutch/American, 1832-1895). ***Ships on a Rocky Coast in a Stormy Sea.*** Oil on canvas. 24.64 x 38.1 cm (approx. 9 ¾"x 15").

12. JOHN BALFOUR PRINGLE (Scottish, 1815-1885). ***The Bark Jane Lyon Passing the Ailsa Craig*** Oil on canvas. 45.72 x 76.2 cm (18" x 30").


13

13. WILLIAM ADOLPHE BOUGUEREAU (French, 1825-1905). ***Mignon Pensive,*** 1869. Oil on canvas. 100.33 x 81.28 cm (39 ½" x 32"). *L12.52. Missing in transit between England and the Isle of Man on February 28, 2002.

** Numbering for the year 2011/2012 Cumulative Index of Missing began with the last issue, Vol. 13, nos. 1 and 2.*

14. **JAN BRUEGHEL** (The Elder) (Flemish, 1568-1625). ***Concert of Birds.*** Oil on copper. 13.97 x 20.32 cm (5 ½" x 8"). *L12.416. Missing from a private residence in Los Angeles, CA on November 25, 2011.

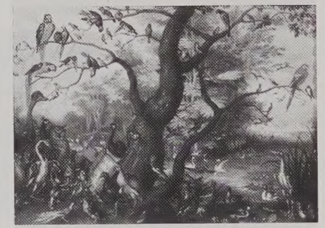
15. **GYSBERT GILLISZ. DE HONDECOETER** (Dutch, 1604-1653) ***Orpheus in a Trance with Animals and Trees,*** 1642. Oil on panel. 65.99 x 105 cm (approx. 26" x 41 ¼"). *L12.167. Missing in Amsterdam, The Netherlands on December 23, 1988.

16. **GILAH YELIN HIRSCH** (American, born 1945). ***Palimpsest,*** 2005. Acrylic on canvas. 182.88 x 45.72 cm (72" x 18"). *L12.316. One of five paintings missing in transit between Bratislava, Slovakia and Moscow, Russia on May 30, 2011.

17. **FRIEDRICH KUNATH** (German, born 1974). ***Untitled,*** 2006. Watercolor on canvas. 64.8 x 84.89 cm (approx. 25 ½" x 33 ½"). *L12.425. Missing from a private residence in Los Angeles, CA on December 1, 2011.

WORKS ON PAPER

18. **HUBERT DE LARTIGUE** (French, born 1963). ***La terre est un berceau / Woman in Sea,*** 1993. Gouache and ink on paper. 43 x 26.01 cm (approx. 17" x 10 ¼"). Dated 04-10-93. Original cover painting for an Arthur C. Clarke book. Published in 1993 in *Editions j'ai lu* and in 1996 in *Super-Héroines chez Soleil.* *L12.84. Missing in transit between Paris and Bordeaux, France on January 12, 2012.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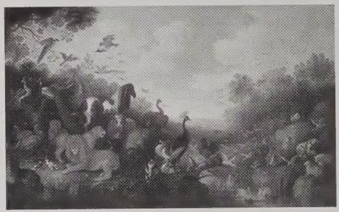
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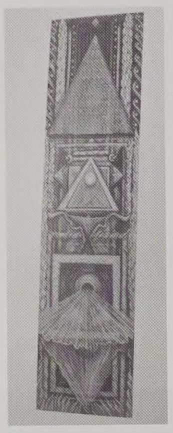
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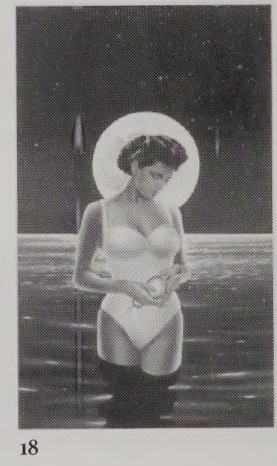
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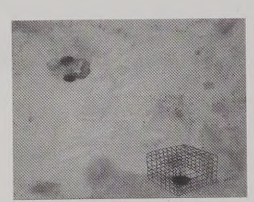
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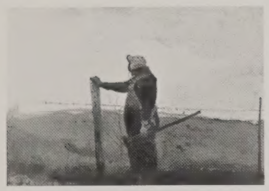
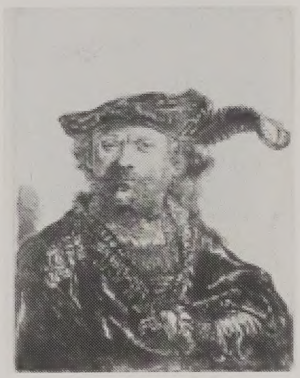


19

19. **ANDREW WYETH** (American, 1917-2009). ***Mending Fences,*** 1960. Watercolor on paper. 55.88 x 6.2 cm (22" x 30"). Signed and dated l/l. *L12.281. Reported missing from a private residence in New York in February 2012.

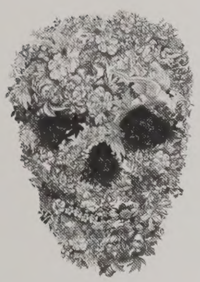
PRINTS, LITHOS



20

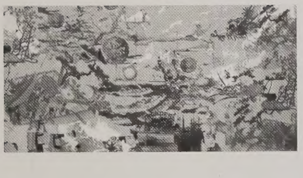
20. **REMBRANDT HARMENSZ. VAN RIJN** (Dutch, 1606-1669). ***Self-portrait in a velvet cap,*** 1638. Etching. 13.64 x 10.46 cm (approx. 5 ½" x 4 ¼"). Signed u/l. Hind 156' Bjorklund 38-B; Bartsch 20. *L12.535. Stolen from a gallery in Seattle, WA on May 11, 2012.

The following works by **JACKIE TSAI** *(Chinese, contemporary) were missing from a gallery in London, England on March 15, 2012. *L12.346:*



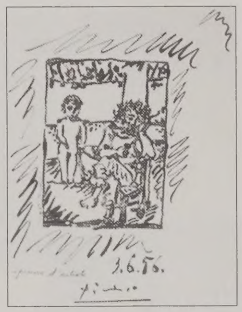
21

21. ***Floral Skull Red Lives,*** 2010. Print on silk. 95 x 67.01 cm (approx. 37 ½" x 26 ¼"). Dated 03/02/2010.



22

22. ***Wave,*** 2008. Print on silk. 100 x 200 cm ((approx. 39 ¼" x 78 ¾"). Ed. No. 2/5. Dated 03/06/2008 AD.



23

23. **PABLO PICASSO** (Spanish, 1881-1973). ***Le Faune et l'enfant,*** 1956. Lithograph on paper. 11.99 x 8.51 cm (approx. 4 ¾" x 3 ¼"). Marked "épreuve d'artist l.l." Item 34 AG Picasso list. *L12.344. Missing from a gallery in Locust Valley, NY on February 25, 2012.

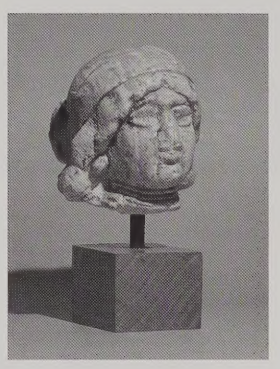
SCULPTURE

SUMERIAN-MESOPOTAMIAN ANTIQUITIES

The following two sculptures were missing from a private residence in Boulogne, France on July 1, 2011. *L12.134:

24. *Female Head* (3rd millennium BC). Limestone. Ht: 5.99 cm (approx. 2 1/4").

25. *Female Head* (3rd millennium BC). Linestone. 4.5 x 4.7 cm (approx. 1 ¾" x 1 ¾")



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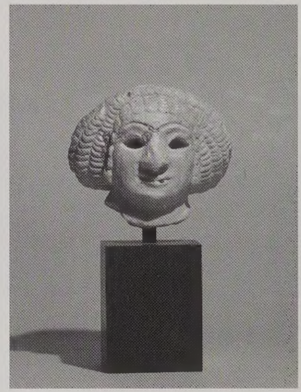


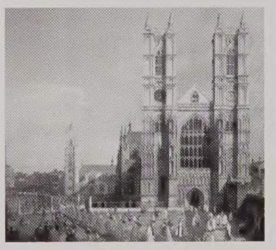
25

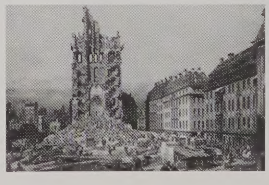
ERRATUM

In the last issue of IFAR Journal (Vol. 13, nos. 1 and 2), the following two paintings by CANALETTO (Italian, 1725-1775) were incorrectly reported as STOLEN from a private residence in Armagh, Northern Ireland on January 3, 2012. ***IFAR has since been notified that no such theft occurred.***

on p. 60:
3. View of Cathedral

on p. 60 and on the inside back cover:
4. City Scene

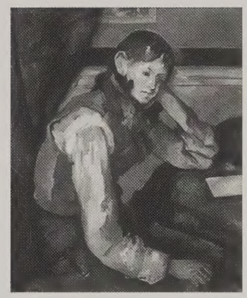




RECOVERED ART*

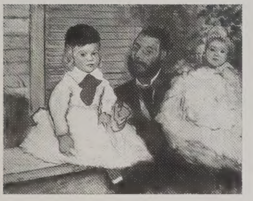
PAINTINGS

*The following two paintings were among four works stolen on February 10, 2008 from the Bührle Collection in Zurich, Switzerland (*C08.24). (See IFAR Journal, Vol. 10, no. 1, p. 50). Two of the paintings — a Monet and a van Gogh — were recovered soon after the theft. The Cézanne painting was recovered on April 12, 2012 in Belgrade, Serbia, and the Degas painting, below, was recovered some time before. See story on page 4, this issue.*



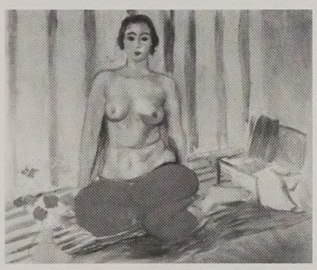
14

14. PAUL CÉZANNE (French, 1839-1906). ***Boy in the Red Vest*** (also known as ***Boy in the Red Waistcoat***), c. 1888–90. Oil on canvas. 80.6 x 64.5 cm.



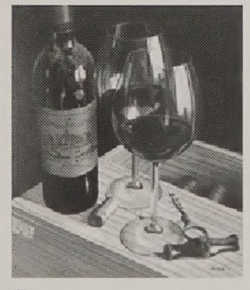
15

15. EDGAR DEGAS (French, 1834-1917). ***Ludovic Lepic and His Daughters***, c. 1871. Oil on canvas. 65.6 x 81 cm.



16

16. HENRI MATISSE (French, 1869-1954). ***Odalisque in Red Pantaloons***, 1925. 60.5 x 73.5 cm. Signed l/l. *N03.50. Stolen from Fundacion Museo Contemporaneo de Caracas and replaced with a forgery. The theft was discovered by the museum in late 2002. (See *IFAR Journal*, Vol. 5, no. 2, p. 4). Recovered in Miami by the FBI in a sting operation on July 17, 2012. Two people were arrested. Story next issue.



17

17. PETER KOTKA (English, born 1951). ***Still Life with Wine Glasses.*** Oil on panel. 60.96 x 50.8 (24" x 20"). *L12.11. Stolen from a gallery in Gloucestershire on January 1, 2012. Recovered by local police on January 5, 2012.

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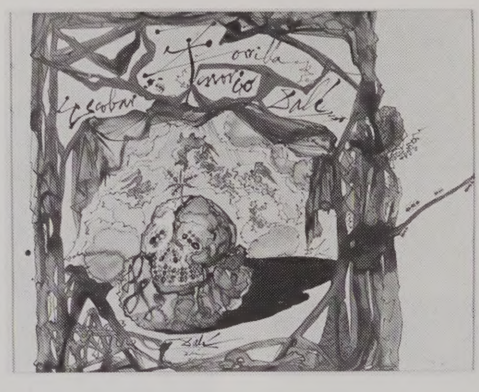
* *Numbering for the year 2011/2012 Cumulative Index of Recovered Art began with the last issue, Vol. 13, nos. 1 and 2.*

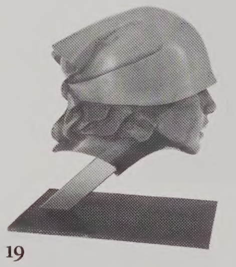
18. SALVADOR DALÍ. *Cartel des Don Juan Tenorio,* 1949. Watercolor and gouache on paper. 22.61 x 35.61 cm (approx. 9" x 14"). *L12.598. Stolen from the Venus Over Manhattan gallery on Madison Avenue, New York on June 20 by a visitor who pulled it off the wall and put it into a shopping bag. Recovered on June 29 at JFK Airport in New York by U.S. Postal inspectors, who intercepted the work when it was returned from Europe in an Express Mail package. The thief, who acted despite the presence of a security guard and other gallery visitors, was captured by a surveillance camera walking out of the gallery with the painting protruding from a shopping bag. The following week, on June 25, the gallery received an email saying that the painting would be returned by Express Mail; the email included a tracking number, and authorities were notified.



18

SCULPTURE

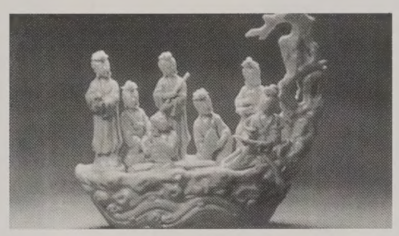
19. GERALD LAING (English, 1936-2011). *Dreaming,* 1979. Bronze. 35.51 x 19.99 x 31.09 cm (approx. 14" x 7 ¾" x 12 ¼"). *L12.172. Ed no. 3/6. Stolen from a museum in Glasgow, Scotland on February 19, 2012. Recovered near the gallery on February 25, 2012, thanks to an anonymous call to the police.



19

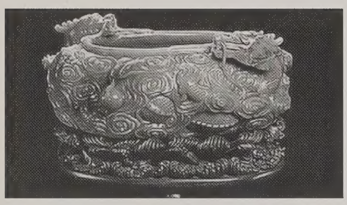
DECORATIVE ARTS

*The following two items (Chinese, Qing Dynasty, 1644-1911) were stolen from the Oriental Museum at Durham University, England on April 5, 2011 and recovered by the police from a field outside Durham on April 15, 2012. *L12.323:*



20

20. ***Figurine.*** Dehua porcelain. 30 x 30 cm (approx. 11 ¾" x 11 ¾").



21

21. ***Water Bowl,*** 1769. Jade. A Chinese poem is inscribed inside the bowl.

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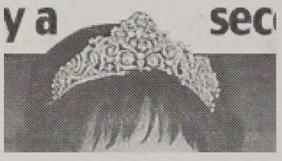
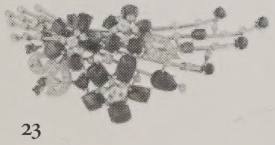
*The following three pieces of jewelry were stolen from the Duchess of Argyll at Glasgow Airport on June 3, 2006 and recovered with the help of the ALR in June 2012. *L.2006.281:*



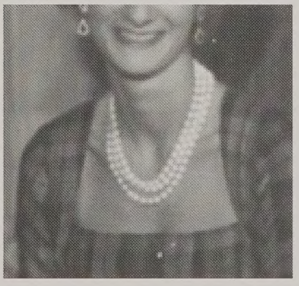
22

22. ***Tiara*** (English, 1837-1901). White gold and diamonds.



23

23. CARTIER (French, 20th century). ***Brooch,*** c. 1960. Platinum with diamonds and sapphires.



24

24. ***Necklace.*** (English, c. 1900). Pearls with a sapphire and white gold clasp.

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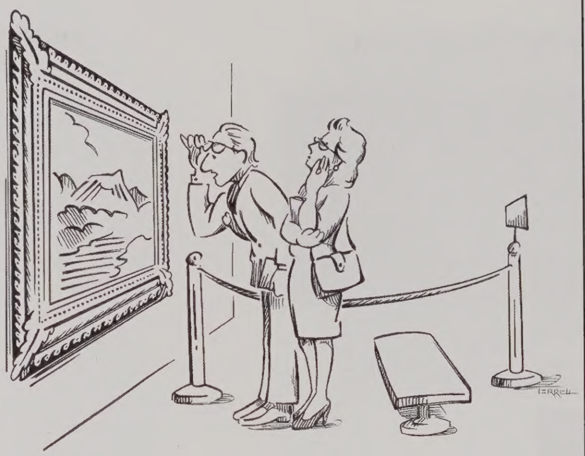

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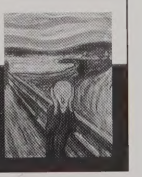
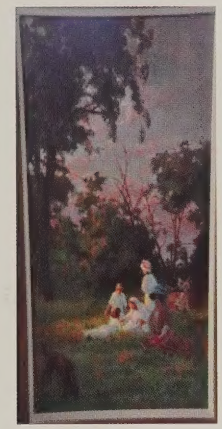


STOLEN ART



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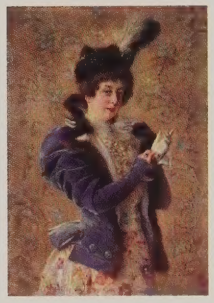

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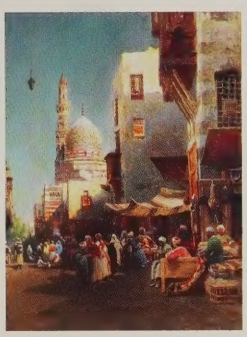

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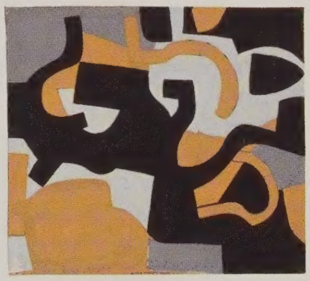

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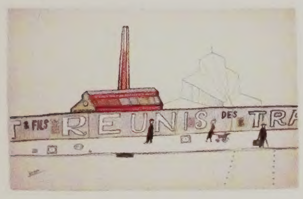

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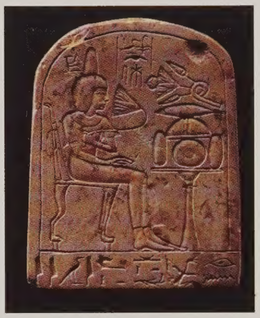

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PAINTINGS

94. FRANK WESTON BENSON (American, 1862-1951). ***Women in Field,*** 1909. Oil on canvas. 139.7 x 91.44 cm (55" x 36"). *L12.264. Stolen from a private residence in Fresno, CA on March 17, 2012.

*The following two paintings were stolen in transit in Paris on March 8, 2012. *L12.306. See also item nos. 110-114 and 116-124, this issue:*

115. KONSTANTIN YEGOROVICH MAKOVSKY (Russian, 1839-1915). ***Portrait of the Artist's Wife,*** 1900. Oil on canvas. 116.5 x 80.49 cm (approx. 45 3/4:" x 31 ¾").

117. NIKOLAI MAKOVSKY (Russian, 1842-1886). ***View of Cairo,*** 1870. Oil on panel. 41 x 31.8 cm (approx. 16 ¼" x 12 ½").

WORKS ON PAPER

125. JUDITH ROTHSCHILD (American, 1921-1993). ***Untitled,*** 1945. Gouache on paper. 13.64 x 15.54 cm (approx. 5 ¼" x 6 ¼"). *L12.211. Stolen from a business office in Fort Washington, PA on February 9, 2012. See also item no. 126, this issue.

130. SAUL STEINBERG (American, 1914-1999). ***Banlieu II,*** 1957. Pen and ink, brush and ink, and crayon on paper. 36.83 x 59.06 am (14 ½" x 23 ¼"). *L12.100. Stolen in transit between Sao Paulo, Brazil and New York City on November 28, 2011.

EGYPTIAN ANTIQUITIES

147. UNKNOWN (Egyptian, New Kingdom, 18th dynasty, 1550-1400 BC). ***Stele of the Son of King Ahmose.*** Limestone. 13 x 10.49 cm (approx. 5 ½" x 4 ¼"). *L12.315. Stolen from a gallery in New York on June 10, 2008.

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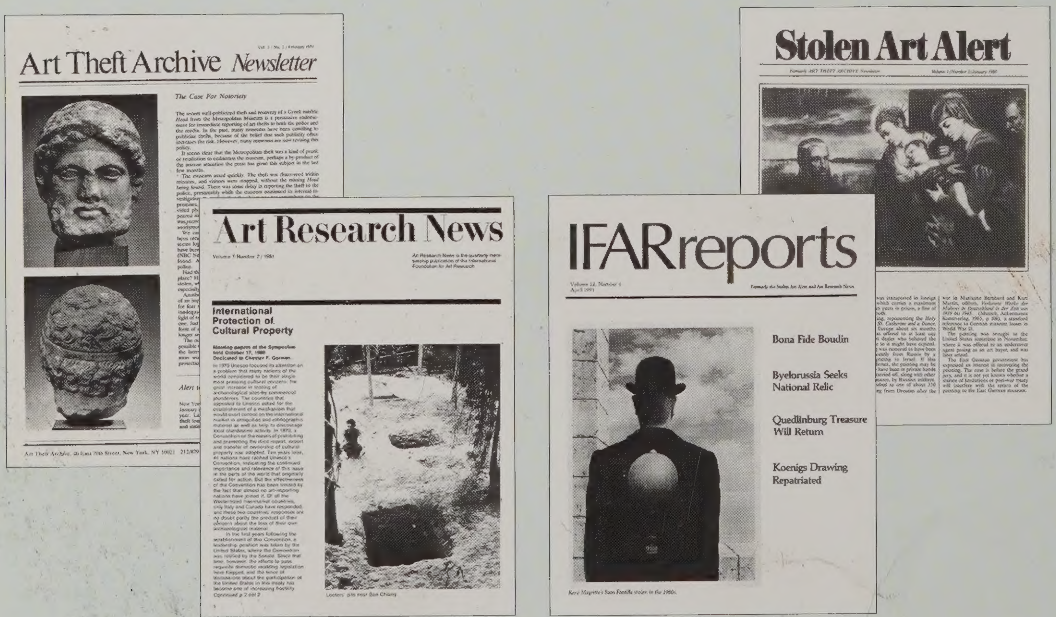
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